DRINKING WATER BOARD
PACKET

MAY 11, 2007

SALT LAKE CITY, UTAH

AGENDA

FOR THE

DRINKING WATER BOARD
WORK MEETING

OF

MAY 11, 2007

State of Utah

Department of
Environmental Quality

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

DRINKING WATER BOARD
WORK MEETING

May 11, 2007

Place: Department of Environmental Quality
168 North 1950 West, Room 101
Salt Lake City, Utah 84116
Phone: (801) 536-4200

8:30 a.m.	1.	Welcome and Introductions – Chairman Erickson
8:40 a.m.	2.	Board Meeting Agenda Item No. 9 – Ken Bousfield
8:50 a.m.	3.	Maintaining Primacy – Ken Bousfield
9:05 a.m.	4.	Loan Origination Fee – Ken Wilde
9:25 a.m.	5.	Discussion of Rules R309-700 and 705, Similarities, Differences and What We Can Do to Make Them More Manageable and Easier to Use – Ken Wilde
9:55 a.m.	5.	Break
10:10 a.m.	6.	Proposed Body Politic Rule – Ken Wilde
11:00 a.m.	8.	Report on Activities by EPA, Congress, etc. – Ken Wilde
11:30 a.m.	9.	Lunch Catered: LeCroissant
1:00 p.m.	10.	Board Meeting

In compliance with the American Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Jennifer Burge, Office of Human Resources, at (801) 536-4413, TDD (801) 536-4414, at least five working days prior to the scheduled meeting.

AGENDA

FOR THE

DRINKING WATER BOARD MEETING

OF

MAY 11, 2007

State of Utah

Department of Environmental Quality

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

DRINKING WATER BOARD MEETING

May 11, 2007
1:00 p.m.
Place: DEQ's Offices
168 North 1950 West, Room 101
Salt Lake City, Utah 84116
Ken Bousfield's Cell Phone #: (80l) 674-2557

1. Call to Order – Chairman Erickson

2. Roll Call – Ken Bousfield

3. Introductions – Chairman Erickson

4. Approval of Minutes – March 2, 2007
   a) Approve Board Meeting Minutes
   b) Review Itinerary Minutes

5. Public Hearing on "Body Politic"

6. SRF/Conservation Committee Report – Vice Chairman Myron Bateman
   1) Status Report – Ken Wilde
      a) Project Priority List
      b) Loan Origination Fee and Reauthorization of Loans that have not been Closed
   2) State SRF Applications
      a) Enoch City Planning Loan (Julie)
      b) Circleville (Mike G.)
      c) Escalante Update (Karin)
   3) Federal SRF Applications
      a) Croydon Deauthorization (Ken W.)
      b) Portage Additional Funding (Julie)
      c) Erda Acres Special Service District (Karin)

7. Authorization to Proceed with Rule Adoption – 2/LT2/LT1 – Patti Fauver

8. Mountain View Community Park Penalty Revision – Patti Fauver

9. Status on the Antimony Variance for the Town of Alta – Ken Bousfield

10. Chairman's Report – Chairman Erickson

11. Directors Report
    a) Division Reorganization – insert
    b) Division Planning Retreat
    c) Division Budget Issues – insert
    d) Division's Work with Lorna Rosenstein Regarding Fluoride – insert
    e) 2007 DWSRF Capitalization Grant Application and Intended Use Plan - insert

12. News Articles

13. Letters

14. Next Board Meeting:
    Date: July 13, 2007
    Tour: Central Iron County Regional Tour
    Tour: 9:00 a.m. - Board Meeting: 1:00 p.m.
    Address to Meet for the Tour and Board Meeting:
    Heritage Center
    Festival Hall
    105 North 100 East
    Cedar City, Utah 84720
    Contact: Nyman
    Phone: (435) 865-2896
    Time: 9:00 a.m.
    Lunch: Cedar Creek Restaurant
    86 South Main Street
    Cedar City, Utah 84720
    Phone: (435) 586-6311
    Reservations Under: Division of Drinking Water

15. Other

16. Adjourn

In compliance with the American Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Jennifer Burge, Office of Human Resources at: (801) 536-4413, TDD (801) 536-4424, at least five working days prior to the scheduled meeting.

AGENDA ITEM 4

a) REVIEW OF THE MARCH 2, 2007 TOUR MINUTES

State of Utah

Department of Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

MINUTES OF THE DRINKING WATER BOARD TOUR OF THE SAN HOLLOW RESERVOIR AND THE QUAIL CREEK WATER TREATMENT PLANT – MARCH 2, 2007

Board Members Present	Board Members Excused
Anne Erickson, Ed.D., Chairman	Daniel Fleming
Myron Bateman, Vice Chairman	Jay Franson, P.E.
Ken Bassett	Helen Graber, Ph.D.
Paul Hansen, P.E.	Dianne Nielson, Ph.D.
Ron Thompson	
Petra Rust	Staff
Laurie McNeill, Ph.D.	
	Karin Tatum

Board members and staff arrived at the San Hollow Reservoir for a briefing and tour of the San Hollow Reservoir and Quail Creek Water Treatment Plant. The Quail Creek Water Treatment Plant is owned by the Washington County Water Conservancy District (WCWCD). Quail Creek staff and Ron Thompson, Board member and General Manager of WCWCD, provided the tour.

The Quail Creek Water Treatment plant has two treatment methods: (1) a conventional surface water treatment and (2) dissolved air filtration (DAF). Quail Creek has a somewhat unique concern regarding the taste and odor of their water due to significant algae blooms. They have gone to great lengths to address this concern, not only at their plant, but at their source as well. The Quail Creek and WCWCD staff is extremely aware of the sensitivity of this subject. They are dedicated to providing a high quality product to their customers as well as provide an environmentally safe solution to the issue.

A picture of the San Hollow Reservoir is attached.

SAN HOLLOW RESERVOIR

AGENDA 4

b) APPROVAL OF THE
MARCH 2, 2007
MINUTES

State of Utah

Department of Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

Drinking Water Board
Anne Erickson, Ed.D., *Chair*
Myron Bateman, *Vice-Chair*
Ken Bassett
Daniel Fleming
Jay Franson, P.E.
Helen Graber, Ph.D.
Paul Hansen, P.E.
Laurie McNeill, Ph.D.
Dianne R. Nielson, Ph.D.
Petra Rust
Ron Thompson
Kenneth H. Bousfield, P.E.
Executive Secretary

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

MINUTES OF THE DRINKING WATER BOARD MEETING HELD ON MARCH 2, 2007 IN ST. GEORGE, UTAH

Board Members Present

Anne Erickson, Ed.D., Chair
Myron Bateman, Vice Chair
Ken Bassett
Daniel Fleming
Jay Franson, P.E.
Helen Graber, Ph.D.
Paul Hansen, P.E.
Laurie McNeill, Ph.D.
Petra Rust
Ronald Thompson

Board Members Excused

Dianne Nielson, Ph.D.

Staff

Kenneth Bousfield
Kenneth Wilde
Bill Birkes
Patti Fauver
Rich Peterson
Karin Tatum
Don Lore
Heather Bobb
Linda Matulich

Guests

Kendall Morris, ACME Water
Lorna Rosenstein, Waterwatch of Utah
Paulina Flint, White City WID
Scott Paxman, Weber Basin Water
Cal Cook, Cedar Fort City
Lonnie Shull, Division of Water Quality
Randy Taylor, P.E., District Engineer
Neil Forster, Rural Water Association
Paul Fulgham, Rural Water Association
Dale Pierson, Rural Water Association
Ken Powell, Wellington City
Tim Jones, Jones & DeMille Engineering
David Gardner, WaterPro
Chad Brown, Circleville City
Eric Franson, Circleville City
Van Martin, Summit Water Distribution
Doug Nielsen, Sunrise Engineering
Art Kimball, White City WID UASD
Marie Owens, Jordan Valley WCD
Brent Richardson, self
Rich White, Escalante City
Guy Graham, Escalante City
Al Deware, Erda Acres Water Company
Lonny Hafen, Veyo Culinary Water
Joyce Houskeeper, Wellington City
Mayor Karl Houskeeper, Wellington City
Paul Ashton, Holliday Water Company
Ken Snook, Rural Water Association
Keith Hansen, Salt Lake Cty. SA#3 & Alta
Steve McIntosh, Salt Lake Cty. SA#3 & Alta

ITEM 1 – CALL TO ORDER

The Drinking Water Board convened in St. George, Utah with Chairman Erickson presiding. The meeting was called to order at 1:30 p.m.

ITEM 2 – ROLL CALL

Chairman Erickson asked Ken Bousfield to call roll of the Board members. The roll call showed there were 10 members present.

ITEM 3 – INTRODUCTIONS

Chairman Erickson welcomed everyone and asked the guests to introduce themselves.

Daniel Fleming reviewed the Rural Water Association's Conference activities.

Chairman Erickson congratulated Daniel Fleming and Dale Pierson on the outstanding Conference.

On behalf of the Drinking Water Board, Chairman Erickson congratulated Ken Bousfield, as the new Division Director and Executive Secretary.

ITEM 4 – APPROVAL OF MINUTES – JANUARY 12, 2007

Chairman Erickson stated a motion to approve the Minutes of January 12, 2007 would be in order.

Petra Rust moved to approve the January 12, 2007 Drinking Water Board minutes.

Daniel Fleming seconded.

CARRIED
(Unanimous)

ITEM 5 – ELECTIONS OF CHAIR AND VICE CHAIR

Chairman Erickson opened up Elections for Chair and Vice Chair for the coming year.

CHAIR:

Myron Bateman moved to approve Anne Erickson Chair of the Drinking Water Board by acclamation.

Ronald Thompson seconded the motion.

CARRIED
(Unanimous)

VICE CHAIR:

Petra Rust moved to approve Myron Bateman Vice Chair of the Drinking Water Board, by acclamation.

Daniel Fleming seconded the motion.

CARRIED
(Unanimous)

Ronald Thompson moved to close the nominations.

Ken Bassett seconded.

CARRIED
(Unanimous)

ITEM 6 – MUTUAL AID AGREEMENT (WARN – U)

Dale Pierson mentioned Rural Water has recognized a very important need to better formalize the water and wastewater systems. Rural Water created a mechanism for water and wastewater systems to be able to help each other out in times of an emergency. The systems that are party to the agreement will help out systems that are having an emergency. One of the most important mechanisms is the capability of providing reimbursement to the systems that respond to the systems needing help.

Rural Water will put the agreement on their website, and maintain the website. Rural Water will gather information to help make the program work. The system will come to Rural Water to sign an agreement for assistance. Rural Water is working on the legal issues. The systems will be encouraged to work together.

Discussion followed.

ITEM 7 – SRF/CONSERVATION COMMITTEE REPORT

1) Status Report

a) Letter from the Attorney General

Ken Wilde mentioned staff received a letter from Fred Nelson stating that the Drinking Water Board is eligible to receive $0.3 million for the Capitalization Grant under the Federal SDWA.

b) Legislative Amendment

Ken Wilde reported on how a bill/amendment goes through the Legislature to become law.

c) Financial

Ken Wilde reported the Board has $4.8 million in the State SRF Fund, of which $591,000 is Grant money, and the rest is Principle money. Staff expects another $3.9 million for interest and repayments this year. The Board will have a total of $8.7 million to use.

Ken Wilde reviewed some problems Garden City has experienced while building their treatment plant. The State Land Office learned, about a year ago, that Garden City was planning on building their treatment plant on state land. Garden City signed an agreement to build their treatment plant. Garden City has been under the gun to get their issue resolved with the State Land Office.

Ken Wilde mentioned the Board has $4.9 million in unauthorized money available to use. The Board will receive another $12,500,000 in earnings and grant money later this year.

Ken Wilde reported some of the projects will be closing soon. St. George City is still working on getting the water rights signed off from the Indian Tribe. The Board authorized a $6 million loan to St. George City for a project. Since St. George City is having some problems with the Indian Tribe, they offered to let the Board use some of their $6 million loan money for other projects.

2) State SRF Applications

a) Gunlock Special Service District – Withdrawn

Ken Wilde reported the Board authorized Gunlock Special Service District 20 years to pay off their loan. Gunlock Special Service District requested changing the pay off on their loan from 20 years to 25 years, which the Board denied. Gunlock has requested withdrawing their loan.

b) Wellington City

Ken Wilde reported Wellington City's request was presented at the January 12, 2007 Board meeting. Mayor Houskeeper addressed the Board. The Board expressed some concern about the potential of Wellington City pulling away from the District and going out on their own. The Board instructed staff to ask Price Water Improvement District to help. Ken reviewed the information staff received from Price River for the Board. Welling City used some state funding for their project, with the intent they would be part of the regionalization system. The District will experience some financial problems if Wellington City goes out on their own. Ken reviewed a letter from Price River's Board of Trustee's expressing unanimous support of Wellington City's funding application.

Mayor Karl Houskeeper, representing Wellington City, addressed the Board.

Discussion followed.

Ronald Thompson moved the Board deny Wellington City's request.

Paul Hansen seconded.

Discussion on motion followed.

Ken Bassett, Anne Erickson, Jay Franson, and Laurie McNeill voted no.

Paul Hansen, Myron Bateman, Daniel Fleming, and Ronald Thompson voted yes.

Helen Graber abstained.

Petra Rust didn't vote.

MOTION FAILED

Petra Rust moved the Board authorize a planning loan for $40,000 at 2%, and to pay the loan off in 5 years to be paid on a yearly basis. Petra amended her motion to include that the scope of work is approved by staff.

Ken Bassett seconded.

Discussion on motion.

Helen Graber, Jay Franson, Paul Hansen, and Myron Bateman voted no.

Petra Rust, Ken Bassett, Anne Erickson, Daniel Fleming, Laurie McNeill, and Ronald Thompson voted yes.

MOTION PASSED

c) Circleville City

Rich Peterson reported Circleville City has requested to table their application. Circleville City has some work they need to finish before their application is presented to the Board. Circleville City will present their application at the May 11, 2007 Board meeting.

Chad Brown and Eric Franson, representing Circleville City, were available for any questions from the Board. Eric Franson addressed the Board.

Discussion followed.

d) Escalante City

Rich Peterson reported Escalante City has 9 springs that have been repaired recently. The springs are part of the line that connects the springs to their water system. The lower line has been experiencing breaks recently. The wells, drilled in 2004, are a concern. Escalante City has a large project estimated at costing $4,344,791. Escalante City is anticipating receiving some money from the CIB for a grant. CIB could receive the request in April or June. CIB will decide on how to apply Escalante's request when they have all of the information. Escalante City is looking at a $1,560,000 construction loan at 2.26% for 20 years with an option of 25 – 30 years, and a grant of $600,896.

Rich White and Guy Graham, representing Escalante City, were available for any questions from the Board.

Discussion followed.

Daniel Fleming moved the Board authorize a construction loan for $1,560,000 at 2.26% for 20 years (with the option to extend the term to 30 years, and 2.46%) a grant for $600,896, and to correct their deficiencies and report back to staff.

Jay Franson seconded.

CARRIED
(Unanimous)

e) Austin Special Service District

Karin Tatum reported Austin Special Service District is requesting changing their $14,000 planning loan to a planning grant. The planning loan was authorized at the January 12, 2007 Board meeting.

Discussion followed.

Daniel Fleming moved the Board authorize changing Austin Special Service District's $14,000 from a planning loan to a planning grant.

Jay Franson seconded.

CARRIED
(Unanimous)

f) Federal SRF Applications

a. Leeds Domestic Water Users Association

Karin Tatum reported Leeds Domestic Water Users Association is requesting a $15,000 planning loan.

Discussion followed.

Laurie McNeill moved the Board authorize a $15,000 planning loan to Leeds Domestic Water Users Association at 0% for 5 years, and to pay back $3,000 annually, beginning one year from the date the loan agreement is signed.

Daniel Fleming seconded.

CARRIED
(Unanimous)

ITEM 8 – AUTHORIZATION TO PROCEED WITH RULE ADOPTION – R309-100 – BODY POLITIC RULE ADOPTION

Bill Birkes reported staff published the proposed Body Politic Rule in the Utah Bulletin on January 16, 2007. The comment period was open for 30 days. Staff received some comments on the rule shortly before the deadline on February 16, 2007, and the comments are included in the packet.

Discussion followed.

Ronald Thompson moved the Board authorize staff to hold a public hearing meeting, for staff to look at modifying the rule so the water systems aren't impacted, and to eliminate the existing private water systems from the rule before the May 11, 2007 Board meeting.

Paul Hansen seconded.

CARRIED
(Unanimous)

ITEM 9 – AUTHORIZATION TO PROCEED WITH RULE ADOPTION – R309-100, 105, 110, 115, 200, 210, 215, 220, 225, 300, 400, AND 405 – FEDERAL RULE ADOPTION AND REORGANIZATION

Patti Fauver mentioned staff needs to finalize the rules, excluding the Body Politic rule, for the State to retain primacy.

Patti reviewed the comments staff received during the comment period, and what needs to be done, on the rules. The comments are in the packet. One of the comments is that the Federal rules need to be incorporated with the State rules. Additional changes were presented in the packet to address EPA Region VIII's comments.

Discussion followed.

Ken Bassett moved the Board authorize staff to proceed with filing the effective notices for Rules R309-105, 110, 200, 210, 215, 220, 225, and 400, file the changes and appropriate forms to Rules R3093-105, 110, 210, 215, 220, and 225, and to address the comments from EPA Region VIII with the Division of Administrative Rules for adoption.

Petra Rust seconded.

CARRIED
(Unanimous)

ITEM 10 – REAUTHORIZATION OF RULE SERIES R309-500 AND R309-700

Ken Wilde reported that the Rules R309-500 through R309-550 as well as R309-700 and R309-705 are scheduled for sunset on September 16, 2007, unless staff files the necessary five year notice of review and statement of continuation. Ken mentioned staff is recommending the Board authorize them to proceed with filing the necessary paperwork to continue the rules.

Discussion followed.

Petra Rust moved the Board authorize staff to proceed with the necessary filing to continue these rules.

Daniel Fleming seconded.

CARRIED
(Unanimous)

Ronald Thompson left the Board meeting.

ITEM 11 – WATERWATCH OF UTAH

Ken Bousfield gave some background information on the fluoride issues, and introduced Lorna Rosenstein, Director of Waterwatch of Utah.

Lorna Rosenstein's presentation addressed: "All public water systems, as a condition of product use, shall require chemical suppliers of direct water additives intended to artificially fluoridate the public water" to:

1) Provide a complete certificate of analysis, to be performed by san ANSI/NSF certified independent testing laboratory, that is specific to each batch of fluoridating substance delivered, which shall include a detailed list of each and all contaminants and the specific concentration of each and all contaminants as measured in the raw product prior to dilution in the manner described by AWWA procedure for the chemical form; and

2) Submit a list of the chronic toxicological data available on the product as it is specifically formulated, i.e., hydrofluosillcic acid with and without contamination, or so state that no toxicological data exists for the product as formulated. And

3) Provide a statement to assure that the specific product fulfills the legislative intent of fluoridation public policy and that their specific product as formulated is safe and effective for purposes of reducing tooth decay at all ranges of expected human consumption when used within the Maximum Use Level as declared for NSF certification.

Discussion followed.

Ken Bousfield identified issues that neither the Board nor staff had jurisdiction over as well as issues the Board and staff could address. Ken also committed to work with Lorna on those issues the Division had jurisdiction over.

The Board directed Ken Bousfield to report back to the Board on the completion of staff's work with Lorna Rosenstein.

ITEM 12 – CHAIRMAN'S REPORT

Chairman Erickson thanked the Board for their participation in the meetings. Chairman Erickson mentioned the diverse backgrounds of each Board member, and thanked them for working so well together.

Chairman Erickson thanked the Board for their support in nominating her for another term on the Board.

ITEM 13 – DIRECTORS REPORT

a) The Town of Alta and the Salt Lake County Service Area # 3 Report

Ken Bousfield provided some background to the Board on the Antimony Variance that was granted to the Town of Alta and the Salt Lake County Service Area # 3 at the Board meeting held the previous year on March 3, 2006.

Ken Bousfield reported that Alta had provided information that showed there was no additional water available for blending purposes in satisfaction of the requirement the Board placed on Alta the previous year.

Ken Bousfield further reported that he received a call from Mark Haig contesting what Alta told staff. Mark Haig was in an accident, and was unable to attend the March 2, 2007 Board meeting. Ken Bousfield asked Mark Haig to send his written comments to him, and the information would be reviewed at the May 11, 2007 Board meeting.

Ken Bousfield mentioned Snowbird was successful in blending the lower antimony water with their higher antimony water. Snowbird's data, reported on a quarterly basis, shows they are in compliance with the standards.

Ken Bousfield mentioned the two year variance granted to Alta will be up next year. Ken Bousfield

b) Report on the Rural Water Conference

Ken Bousfield reported on the Division staff's involvement the Rural Water Association's Annual Conference this year was very successful. Ken reviewed what staff accomplished this year at the conference.

The Board congratulated the Rural Water staff and the Division staff on their corporation with each other during the year, and for the exceptional work they both accomplished at the conference this year.

Discussion followed.

ITEM 14 – NEWS ARTICLES

The news articles are in the packet.

ITEM 15 – LETTERS

The letters are in the packet.

ITEM 16 – NEXT BOARD MEETING

The tentative schedule for the next Board meeting is set for May 11, 2007. The Board meeting and tour are scheduled for Park City, Utah. The tour will be in the morning. The Board meeting will start at 1:00 p.m.

Myron Bateman and Helen Graber mentioned they won't be able to attend the Board meeting in May, due to school graduations.

ITEM 17 – OTHER

No other business.

ITEM 18 - ADJOURN

Chairman Erickson stated a motion to adjourn the Board meeting would be in order.

Petra Rust moved to adjourn the Drinking Water Board meeting at 4:10 p.m.

Motion carried.

CARRIED
(Unanimous)

Linda Matulich
Recording Secretary

AGENDA ITEM 5

PUBLIC HEARING ON "BODY POLITIC"

Public Hearing
R309-100

Body Politic Rule Amendment

On March 2, 2007 the Board authorized the Division to schedule a public hearing in accordance with R15-1-4 concerning when hearings must be held following comments. Enclosed are the written comments received during the publication period. Notice of the public hearing scheduled for today was provided to those who made comment and advertised in the April 15th edition of the Utah Bulletin.

Staff Recommendation:

Staff awaits Board direction on this issue.

U:\dr_water\ENGINEER\Bbirkes\WP\DWB\BDPKT Body politic public hearing.doc

Board meeting 5/11/2007

THE
BODY POLITIC RULE
CAN BE FOUND AT
FOLLOWING SITE

This is the second filing for the proposed Body Politic Rule. The Rule was published in the January 15, 2007 edition of the Utah Bulletin and can be found at:

http://www.rules.utah.gov/publicat/bulletin/2007/20070115/29370.htm

The first proposed amendment of the Body Politic Rule can be viewed at:

http://www.rules.utah.gov/publicat/bulletin/2006/20061215/29304.htm

RECEIVED
FEB 08 2007
Drinking Water

Rural Water Association of Utah
76 North Main Drive • Alpine, Ut 84004 • Phone 801-756-5325 • Fax 801-756-

Monday, February 05, 2007

To: Kenneth Bousfield, Acting Executive Secretary, Utah Drinking Water Board

From: Private Water Systems Committee - Rural Water Association of Utah

Subject: Division of Drinking Water Rule Change

Dear Ken

The Private Water System Committee for RWAU, was informed of the proposed rule change to the Utah Administrative Rule R309-100-4 subsections(f)(i) and (f)(ii) under Subsection R309-100-4(1) requiring that any new public drinking water system categorized as a community water system or a public water system serving water to multiple property owners no matter how the system is categorized shall be under the sponsorship of a body politic as defined in Section R309-110-4; and that existing privately-owned public drinking water systems which propose to expand their service to new subdivisions shall comply with Subsection R309-100-4(f)(i) before the Division will approve any plans and specifications for expanded service facilities or pipelines.

We of the Private Water Systems Committee, which the systems represent approximately 40% of the RWAU Member Systems, strongly disagree with these amendments that are being posed. We feel that the amendments are being placed to hamper the growth of these privately owned systems and they are being singled out as being non-compliers with the drinking water rules.

Our points against the rule change are as listed.

- Individual Property Rights (Developmental Rights)
- There are currently Rules already in place for proper development of new and existing public water systems, Capacity Development Rules, which address
  - Source Capacity
  - Storage Capacity
  - Distribution Capacity
  - Proper Operation and Maintenance
  - Financial Management
- Why should this new rule focus only on water systems serving residential connections and not other privately owned water systems, Transient and Non-Transient Water Systems
- The local County's, with the Division of Drinking Water should be doing the approval of new subdivision that require the development of a water system

We wonder are Privately Owned Water Systems more likely to have compliance issues over the Publicly Owned Water Systems, we say no. Most compliance issues are due to poor operation and maintenance, and we know State wide these problems exist in Cities/Towns, Districts, Camp Grounds (Transient Water Systems), Commercially Owned Water Systems (Non-Transient Water Systems) and Privately Owned Water Systems (Community Water Systems).

Sincerely

Paul Fulgham
Chairman, Private Water System Committee
Rural Water Association of Utah

SMITH | HARTVIGSEN PLLC

ATTORNEYS AT LAW

215 South State Street
Suite 650
Salt Lake City, Utah 84111

T 801.413.1600
F 801.413.1620
www.smithhartvigsen.com

February 13, 2007

Utah Department of Environmental Quality
Division of Drinking Water
Attn: Kenneth Bousfield
150 North 1950 West
Salt Lake City, Utah 84114-3085

Subject: Comments on Proposed Rule Change - Amendment of Rule R309
DAR File No. 29370

Dear Ken:

This firm represents several private water companies which provide culinary water service, such as Draper Irrigation Company, Wilkinson Cottonwood Mutual Water Company, and Hidden Hollow Water Company. We and our clients are concerned about the pending proposed rule change to Rule R309 of the Utah Administrative Code, particularly the proposed changes to R309-100-4(f)(i) and (ii). This proposed amendment would require that all new public drinking water systems classified as either a community water system or a public water system would be required to be sponsored by a "body politic." It would also require all existing systems to become sponsored by a "body politic" in order to expand service to any new subdivisions.

We believe that this proposed amendment unfairly burdens private water companies and those that making the investment to create and maintain these systems. The proposed amendment would effectively take away the developmental rights of individuals and entities that are willing to invest in a private water system in order to facilitate development activities. Under the proposal, their investments would come under the control of a body politic which could effectively prohibit their obtaining the expected return on their investments. Under this proposal, the free market system is turned over to government regulation. There are already sufficient market forces pressuring private water companies towards consolidation and conversion to public entities, such as the certified operator requirements and the ever increasing water quality regulations. To this point, the water companies have still had a choice in determining what is best for their respective circumstances. However, the new rule would take that choice away and force all companies toward the opposite of privatization. We believe that is moving in the wrong direction.

Most private water companies are already providing high quality water and service to their customers under the existing regulations. Although there are always a few exceptions to the rule, those exceptions can be, and are being, dealt with appropriately under the existing regulatory structure, which we believe is an adequate system as it now stands.

Furthermore, the proposed rule, as it is structured, applies only to the larger systems which serve residential connections. It does not apply to smallest systems or to systems providing services for non-residential services, which could include culinary service to schools, businesses, industries, etc. The smaller systems tend to be the ones that are more prone to problems. Similarly, the water quality issues apply to any system providing culinary service. Therefore, the proposed amendment is not an efficient means of addressing the type of problems this proposal appears to be targeting.

The impact of adoption of this proposed amendment would be substantial on most of our private water company clients. It would discourage existing companies from expanding, which is often needed to build a sufficient customer base to support upgrades and needed improvement – in other words, it is an obstacle to obtaining the economies of scale. It also shifts control away from those who created the systems with the anticipation of long term returns on the required investments, which are typically quite substantial. It may also make some new projects infeasible.

Given these concerns and potential impacts, we respectfully request that the amendments proposed in subsections (i) and (ii) of R309-100-4 be withdrawn from the overall proposed rule change. We would also request a public hearing on the matter if the Division is desirous of moving forward with this particular amendment.

Please send any notices or correspondence concerning this proposed rule change to me at the address on the first page. Thank you for your consideration of these comments.

Sincerely,

SMITH HARTVIGSEN, PLLC

David B. Hartvigsen

Bill Birkes - Proposed rule change to R309-110-4 and R309-100-4(1)

From: "Baxter, Paul"
[redacted]
Date: 02/14/07 10:03 AM
Subject: Proposed rule change to R309-110-4 and R309-100-4(1)

February 14, 2007

To whom it may concern,

I am the drinking water system manager for the ATK Thiokol non-transient, non-community drinking water system, #02032. This system provides drinking water to manufacturing facilities serving a transient population of approximately 4,000 in our plant and the adjacent plant currently owned by Autoliv, which is located on property that was formerly a part of our plant. We are opposed to the proposed rule change in Administrative Rule R309-100-4 and R309-100-4(1) that would require a "body politic" sponsor for new and expanded systems. Besides limiting the options for land development, this rule could create insurmountable obstacles for private systems such as ours, which is required to support our plant that provides thousands of high paying jobs in the local area.

Our system is fully complaint with all state and federal regulations, which regulations we believe are fully adequate in their present form. There may be some justification for the proposed rule change, but if there is an adequate justification, we are totally unaware of it. We believe that the proposed change would place an undue burden on new and existing private systems around the state.

I also believe that the proposed rule would limit the options and place undue limitations and burdens on property owners in areas and communities such as the one where I reside (Mantua, Utah) in which the community has been either unable or unwilling to allow new water connections for the past several years.

Sincerely

Paul K. Baxter, P.E.
Drinking Water System Manager
ATK Launch Systems

From: "Rick Hafen" <rhafen@infowest.com>
To: "Bill Birkes" <bbirkes@utah.gov>
Date: 02/14/07 11:42 AM
Subject: Comments to proposed R309-100
Attachments: ldwa070213.com.pdf; ldwa070213.com.doc

Bill:
Attached are my comments to Proposed Rule R309-100. I have attached the comments in both PDF and Microsoft Word format. I am also faxing a signed copy. Please contact me with any questions.

Rick Hafen
(435) 634-0244

COMMENTS TO PROPOSED RULE AMENDMENT AND REQUEST FOR HEARING
Proposed R309-100-4(f)(I) and (ii), and R309-110-4

INTRODUCTION

Background

On January 15, 2007, the *Utah State Bulletin* published Notice of Proposed Rule Change to R309-100, R309-110 and other rules promulgated and administered by the Drinking Water Board, the "Board," through the Division of Drinking Water, the "Division." The proposed changes addressed in these comments relate to the enactment of R309-100-4(1)(f) Management and Control of Community and Certain Non-Community Public Drinking Water Systems and R309-110-4. Definitions. "Body Politic."

Purpose for the Rule Change

The stated purpose of the rule change is "to incorporate the Drinking Water Board's desire that new public drinking water systems created to serve new residential subdivisions be sponsored by a body politic or political subdivision of the state."The proposed rule gives no indication of the reasons for the Board's desire to have new residential subdivisions sponsored by a body politic. The real reason for the proposed rule change appears to be an attempt to legislate a level of service for existing privately owned public water systems and to prevent or impede the creation of new privately owned public water systems and replace them with existing or new bodies politic. A Division staff member identified three reoccurring concerns discussed by the Board associated with privately held public water systems and which would hopefully be resolved by implementation of the proposed rule. These concerns are: (1) the continuing availability of the underlying water rights as a basis to deliver the required flow and quantity of water required under the Division's rules (in one instance a developer's water rights were used as collateral for debt and then foreclosed upon leaving no water rights for the continuing operation of the public water system); (2) the fact that water users served by a privately owned public water systems that have been exempted from Public Service Commission jurisdiction are not aware of their rights to governance of the water system; and (3) the continuing fiscal viability and financial accountability of privately owned public water systems to their user. An additional reason may be the advantage that a body politic may have with respect to: (I) access to governmental grants; (ii) taxing power; and (iii) other financial mechanisms not available to privately owned public water systems for use in water system maintenance, improvements and governance issues.

Kendrick J. Hafen, on behalf of Leeds Domestic Waterusers Association, "LDWA," submits the following comments to the proposed rules.

COMMENTS

1. The Board's authority is "limited to the specific authority granted [it] under this title." § 19-1-106 (2). Under § 19-4-104(a), the Board's authority in making rules is limited to the following:

> (I) establishing standards prescribing the maximum contaminant levels in any public water system and provide for monitoring, record-keeping, and reporting of water quality related matters;
> (ii) governing design, construction, operation, and maintenance of public water

systems;
(iii) granting variances and exemptions to the requirements established under this chapter that are not less stringent than those allowed under federal law;
(iv) protecting watersheds and water sources used for public water systems; and
(v) governing capacity development in compliance with Section 1420 of the federal Safe Drinking Water Act, 42 U.S.C.A. 300f et seq.

None of these rule-making powers authorize the Board to adopt rules governing the management or control of the type of entity or assurances required to operate public drinking water systems. The board is therefore without authority to promulgate rules affecting: (a) the nature of entities authorized to deliver water to residential subdivisions; or (b) requiring sponsorship by a body politic for new, or expansions of, existing public water systems.

2. Proposed R309-100-4 is flawed in that it fails to define the meaning and extent of "sponsorship." Water companies supplying water to the general public are regulated by the Public Service Commission of Utah, the "PSC." The PSC either regulates a water company's delivery of services or exempts a water company from regulation by the PSC under R746-331. Under the proposed definition of "Body Politic" in R309-110(4), body politic "means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of [sic] the State." Because all water companies are either regulated or exempted from regulation by the PSC, are all water companies therefore "sponsored" by the PSC, an agency of the State, and therefore outside the authority of the proposed rule? Further, "sponsorship" denotes the giving of security or a promise for another. What is Board's expected security or promise by the sponsor on behalf of a private water company? What evidence of "sponsorship" will the Board require from the body politic as evidence of sponsorship to approve a new public drinking water system or the expansion of an existing public drinking water system for a new or existing private water company? All of these questions need to be addressed in the proposed rule before it is adopted.

3. Proposed R309-100-4(f) requiring that (1) any new public drinking water system be under the sponsorship of a body politic; and (2) any existing privately owned public drinking water system proposing to expand service to new subdivisions be sponsored by a body politic, flies in the face of the Utah Legislature's declared privatization policy described in The Utah Privatization Act, § 73-10d-1 et seq., UTAH CODE ANN., the "Act." The Act declares the policy of this state "is to assure its citizens with adequate public services, including drinking water . . .at a reasonable cost." The proposed rule changes will increase the cost of drinking water to Utah citizens served by private water companies. Requiring "sponsorship" by a body politic of a new or expanding private water company vests unfettered power in the body politic to impose its regulations, whether reasonable, or arbitrary or capricious, upon water companies seeking to establish or expand public water systems. Under the proposed rule, a body politic may arbitrarily impose burdensome and unnecessary controls upon existing or new water companies seeking to

supply water to new development as a condition of "sponsorship." This power is without accountability. Many governing boards of bodies politic are not elected, they are appointed by counties, cities, or towns. Once in place, these boards remain highly static and are basically immune to public discussion or recall. This authority to dictate water service requirements for new development emasculates the powers given to county, city and town planning commissions. This power could, and will likely, result in the construction of new public water systems with new and separate water supply, storage, and distribution system when an expansion of an adjacent public water system would be more cost efficient. Thus, rather than providing water at reasonable rates, the body politic sponsored system will likely develop a new and separate water supply, storage and distribution facilities, thus increasing costs.

4. The proposed rule sought to be enacted is under the purview of the PSC. The PSC is vested with power and jurisdiction to supervise and regulate every public utility in the state. §54-1-1. "Public utility" includes every water corporation where service is performed for or the commodity delivered to the public generally. § 54-2-1(15)(a); 54-2-1(27). However, public utility does not include private irrigation companies engaged in distributing water only to their stockholders or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state. § 54-2-1(27). Adoption of the proposed rule would erode the PSC's jurisdiction over the delivery of water services because sponsorship by a body politic would remove the water company from PSC jurisdiction, or duplicate and confuse regulation of the water company with perhaps conflicting requirements imposed by the body politic and PSC. Further, the proposed rules usurp authority from the Division of Public Utilities which was established to promote the safe, healthy, economic, efficient, and reliable operation of all public utilities and their services; and provide for just reasonable, and adequate rates, charges, classifications, rules, regulations, practices and services of public utilities. § 54-4a-6(1).

5. Request for Hearing

LDWA requests a hearing at which time these issues can be discussed in more detail prior to implementation by the Division.

DATED this 14th day of February, 2007.

Kendrick J. Hafen
Attorney for Leeds Domestic Waterusers Association

JOHN S. FLITTON
ATTORNEY-AT-LAW
1840 Sun Peak Drive, Suite B-102
Park City, Utah 84098

(435) 940-0842
Facsimile: (435) 940-0852
EMAIL: jsflittonlaw@aol.com

February 14, 2007

Sent Via E-Mail to:
Attn: Bill Birkes
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF DRINKING WATER
150 North 1950 West
Salt Lake City, Utah 84116-3805

RE: Comments Regarding Rule 309-105

Dear Bill:

This letter represents formal comments by Summit Water Distribution Company ("Summit Water") on proposed Rule 309-105 and its impact to private development of water rights in the State of Utah. As drafted, the rule would prevent individuals and entities from investing in water infrastructure that is critical to economic development within the state. It is apparent that all the ramifications of the proposed rule have not been fully evaluated. The practical effect of the rule would grant local government entities (bodies politic) enhanced authority to limit zoning approvals, raises constitutional 'taking' claims, is anti-competitive under the Sherman Act, and exceeds the authority of the Division of Drinking Water under the Utah Safe Drinking Water Act. Utah Code Ann. §§ 19-4-101 through 19-4-112.

I. THE PROPOSED RULE IS CONTRARY TO PUBLIC POLICY.

It is long standing policy of the State of Utah to promote private development of the state's water resources. That policy has its genesis in the entrepreneurial spirit of the Mormon pioneers unlike riparian water law, which is predominant in the eastern states, the early Utah settlers recognized a need to convey scarce water resources to the place that is most economical. In Utah, development of real property is necessarily dependent on a firm and available water supply. Much like the early settlers, development of critical infrastructure is dependent on the work of private individuals.

Summit Water was founded in 1979 out of necessity. The tourism mecca in the Snyderville Basin was in its infancy and there were no publicly funded water resources available. Summit Water's founders tried earnestly and in vain to get Summit County to sponsor a publicly funded water system. When they were turned down by the Summit County Commission, the

only option for development was private financing. The incorporators of Summit Water enacted strict policies and regulations to ensure that there was adequate water supply and source capacity to meet these later developments. The reason for this was that the property values of the land they were developing were directly tied to water supply. Over its almost 28-year history, Summit Water has never failed to meet water quality standards or to have adequate water supply during peak daily demand periods for all of its shareholders.

If the proposed rule had been in effect in 1980, Summit Water would likely not exist. Summit County's "no growth policy" would have prevented sponsorship of a water system that relying serves approximately 6,000 residents in the Snyderville Basin. Summit Water serves a majority of the commercial development (tax base) of the Snyderville Basin along with numerous residential developments. Without private investment made by Summit Water, Summit County's tax base would be dramatically reduced. Where would Summit County and the State of Utah be today without the private investment in water resources made by the non-profit mutual water company, Summit Water?

II. THE PROPOSED RULE VIOLATES THE 'TAKINGS' CLAUSE OF THE FIFTH AMENDMENT.

Water rights have been deemed by the U.S Supreme Court to be a form of property rights subject to protection under the Fifth Amendment of the United States Constitution. Furthermore, under Utah Code Ann. §73-10d-1 it is the express policy of the State of Utah to promote private development of water rights and water resources. Those have been the rules under which individuals and entities have invested literally millions of dollars in developing source capacity, pipelines, and storage facilities with the understanding their water rights afford them legal protection. Without the assurance of rule of law, the investments that have been made would be unwarranted and ill-advised. The proposed rule would flip that system of economic reliance on its head. With the requirement of body politics sponsorship, a property owner could be denied the ability to divert and use water authorized by the Utah Division of Water Rights on a whim and therefore deprives the water right owner of a property right in which he/she has invested.

Throughout the state of Utah there is a battle between property/water right owners and local government over the appropriate use of land. Under the United States Constitution, property rights including water rights are firmly protected. It is well settled under case law that the rights of property owners cannot be impermissibly infringed upon. The Utah Legislature has enacted specific statutes that limit the authority of local government to deny planning approval. The proposed rule, however, grants an additional justification for local governments to deny the lawful and appropriate use of land and water rights will ultimately lead to claims of 'taking' under the Fifth Amendment.

For example, a land owner owning three (300) hundred acres of land with water that has been historically used and decreed by the courts to be valid, seeks to develop that land for homes and/or businesses. The land owner first seeks and obtains approval from the Utah Division of

Water Rights for a change application authorizing the requested uses. However, those lands are distant from any government sponsored water system. If the local government entity decides that they do not want to see development on those lands, they reject the request for sponsorship under the proposed rule. Under these circumstances, the rule has allowed the county to exceed the statutory planning and zoning authority and has stepped outside of the bounds of constitutional law on the issue of 'takings.'

III. THE PROPOSED RULE HARMS THE ECONOMY AND THE ULTIMATE USER OF THE WATER BY SUPPORTING ANTI-COMPETITIVE PRACTICES.

To further illustrate the impact of the proposed rule on water development and hence the economy of the state of Utah, is the very real example of the issues that Summit Water Distribution Company has faced in Summit County. Summit Water is a non-profit mutual water company owned by its shareholders. Its rates for delivery are among the lowest in the state of Utah and, as stated above, it has never failed to meet its delivery obligations both in terms of quantity and quality. As recognized by the Division of Drinking Water, Summit Water has consistently maintained a source capacity well in advance of current demand. The company is a model for private development of water resources. Despite its impeccable track record, the proposed rule would destroy its ability to continue to expand its water resources and fully use the rights for which its shareholders have invested millions of dollars.

For at least the past seven (7) years, Summit Water has fought attempts by Summit County to "run it out of business". First, in 2000, Summit County adopted its Concurrency Ordinance that limited the amount of water that Summit Water could sell to new shareholders. Summit County's concurrency rating dated July 13, 2000, approved Summit Water to provide for 50 new connections. In response to the inappropriate rating, Summit Water asked the Division of Drinking Water to review its concurrency rating. In September, 2000, the Division of Drinking Water re-rated all of Summit Water's sources and came up with a rating of 1639 gallons per minute of excess capacity. Summit Water fought the county rating, based in part on Drinking Water's analysis, for more than a year. In the mean time, Summit County attempted to condemn Summit Water and all of its resources and in the end, Summit Water was forced to file a lawsuit challenging the county's actions both on a constitutional basis in depriving them of the their water resources and on anti-trust claims.

Early in the lawsuit, the court ruled in favor of Summit Water on the source capacity rating claims and the anti-trust claims are still pending. However, a portion of the anti-trust claims have been before the Utah Supreme Court, which ruled unanimously in favor of Summit Water Distribution Company and in the decision, the court noticed serious concerns about the behavior of the county and its attempt to run Summit Water out of the water market. A copy of the Supreme Court Opinion is attached hereto as Exhibit "A".

In many areas of Utah, private investment has established water systems to serve the needs of citizens and property owners. In the case of the Snyderville Basin, Summit County

decided in early 2000, to enter the water market and provide water service to those interested in serving their properties. Competition benefits all of the citizens and consumers in the state of Utah. When there is competition, prices are reduced and the supplying entities find more efficient means to serve the public. The effect of the proposed rule would be to supplant competition by giving local government entities the ability to deny expansion of service to new areas. That control by a government entity would be contrary to the state and federal anti-trust laws and would only harm the public.

IV. THE PROPOSED RULE IS OUTSIDE OF THE JURISDICTION OF THE DIVISION OF DRINKING WATER.

The Division of Drinking Water jurisdiction is based on the Utah Safe Drinking Water, which is a statute that implements and mandates under the Safe Drinking Water Act. The sole purpose of the Division of Drinking Water is to ensure a safe and reliable drinking water supply. The proposed rule impermissibly delegates that responsibility to local government, which in some instances has interest completely contrary to the purpose behind the Safe Drinking Water Act. The Division of Drinking Water's primary concern is with quality and quantity of water supply. The Division already has rules relating to expansion of water systems and source capacity. Instead of delegating authority to local government units that have neither the expertise or the vision of the Division, Drinking Water should enhance its monitoring and reporting requirements under the rules already in place. If any amendments are to be made, they should be made to source capacity regulation and require that before approval is granted for development or expansion of existing water systems the private or public water entity provide evidence that it has existing source capacity, water rights, distribution capacity, and storage to meet the proposed needs. That is a much direct approach to the problem that has plagued some private water entities (and public entities are not exempt from these same problems) and avoids the legal and constitutional issues invoked by the proposed rule.

CONCLUSION

As an entity Summit Water has always been grateful of the important role that the Division of Drinking Water plays. The Division has given invaluable advice on many projects undertaken by Summit Water and its shareholders and the general public have benefited greatly from the expertise offered by the Division. We ask that you seriously consider the implications of this proposed rule and further ask and reserve the right to submit additional information in furtherance of this comment prior to the decision of the agency.

Very truly yours,

John S. Flitton
Attorney for Summit Water

2005 UT 73

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8P copies

This opinion is subject to revision before final publication in the Pacific Reporter.

IN THE SUPREME COURT OF THE STATE OF UTAH

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Summit Water Distribution Company, a Utah non-profit corporation; et al.,
Plaintiffs and Appellants,

v.

Summit County; Summit County Commission; Mountain Regional Water Special Service District, a body politic of the State of Utah; Patrick D. Cone, Shauna L. Kerr, Eric D. Schifferli, County Commissioners; Douglas Evans, Employee and President of Mountain Regional Water Special Service District; Montgomery Watson Harza, a California corporation and its employee and agent, William Todd Jarvis, an individual; and John Does 1-10,
Defendants and Appellees.

No. 20040033

F I L E D

November 4, 2005

Third District, Silver Summit
The Honorable Robert K. Hilder
No. 010500359

Attorneys: Robert S. Campbell, Scott M. Lilja, Clark K. Taylor, Jennifer Anderson, John F. Flynn, Salt Lake City, for appellants
Jody K. Burnett, George A. Hunt, Robert C. Keller, Michael D. Zimmerman, Kimberly Neville, Salt Lake City, David L. Thomas, Coalville, for appellees
Mark L. Shurtleff, Att'y Gen., Annina M. Mitchell, R. Wayne Klein, Asst. Att'ys Gen., for Attorney General amicus
Mark K. Buchi, Greggory J. Savage, Richard D. Flint, Salt Lake City, for Intermountain Power Agency amicus

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DURHAM, Chief Justice:

¶1 The appellants brought suit against Summit County, a county-created water service district, and related parties, alleging antitrust violations under section 76-10-914 of the Utah Antitrust Act and Article XII, Section 20 of the Utah Constitution. The district court dismissed these claims on the basis that the appellees were exempt from the Antitrust Act under Utah Code section 76-10-915(1)(f) and that the constitutional antitrust provision is not self-executing. The appellants challenge the district court's analysis of both issues on appeal. Because we hold that the appellees' alleged anticompetitive activities do not qualify as acts of a "municipality" that are "authorized or directed by state law" under section 76-10-915(1)(f), and that the appellees are therefore not entitled to the statutory exemption, we do not reach the issue concerning the interpretation of Article XII, Section 20.

BACKGROUND

¶2 When reviewing a district court's grant of a motion to dismiss, "we accept the factual allegations in the complaint as true and interpret those facts and all reasonable inferences drawn therefrom" in the light most favorable to the plaintiff as the nonmoving party. Russell Packard Dev., Inc. v. Carson, 2005 UT 14, ¶ 3, 108 P.3d 741. We recite the facts of this case accordingly.

¶3 Appellant Summit Water Distribution Company (Summit Water) is a private nonprofit corporation that distributes culinary water for commercial and residential use to its shareholders within the unincorporated portion of the Snyderville Basin in Summit County. In January 2000, Summit Water was the leading competitor among eleven water companies that operated in the Snyderville Basin. In February 2000, Summit County (the County) adopted an ordinance renaming an existing special service district as the Mountain Regional Water Special Service District (Mountain Regional), and naming the County's Board of County Commissioners as Mountain Regional's governing board. The goal of the resolution was to establish Mountain Regional as a Snyderville Basin-wide water service district. At that time, Mountain Regional had 5.7% of the market in Snyderville Basin while Summit Water had 34%. Shortly afterwards, Mountain Regional hired William Todd Jarvis--an employee of Montgomery Watson Harza, a California corporation--to provide water engineering services on an independent contractor basis. At around the same time, the County also hired Jarvis to perform water concurrency ratings of culinary water companies. These ratings purported to measure a water company's capacity to supply

water to county residents. The County also passed new concurrency ordinances that required developers seeking building permits or planning and zoning approvals to prove they had obtained a commitment from a water company with a sufficient concurrency rating to provide water to their developments.[1] According to Summit Water, the County used the arrangement with Jarvis, in conjunction with the new concurrency ordinances, to ensure that Mountain Regional would have a competitive advantage in seeking new water connections.

¶4 Summit Water also faced a tax assessment increase, from $5000 to nearly $60,000, and the County Commission denied its appeal from that assessment. Summit Water was also forced to engage in an extended dispute with Jarvis over its concurrency rating while Mountain Regional faced no such difficulties. Meanwhile, Mountain Regional also sought, ultimately unsuccessfully, to acquire Summit Water's water infrastructure through eminent domain proceedings. As of September 2001, Mountain Regional had acquired all but three of the water companies operating in the Snyderville Basin.

¶5 In September 2001, Summit Water and a number of its shareholders (collectively, Summit Water appellants) brought suit against the County, the County Commission, Mountain Regional, Montgomery Watson Harza, and a number of their officers and employees (collectively, County appellees), alleging that these entities and individuals had conspired in restraint of trade and in an attempt "to monopolize the culinary water product market in the Snyderville Basin geographic market." As subsequently amended in March 2002, the complaint specifically alleged that the County appellees had "conspired, agreed, and combined to unlawfully tie the sale, distribution and delivery of [Mountain Regional] water to [the grant of] building permits and planning approvals, fix prices, [engage in] other restraints of trade and impair competition," and had engaged in "illegal conspiracies, combinations and arrangements by anti-competitive conduct" in order to gain a monopoly over culinary water distribution in the

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[1] A temporary concurrency ordinance, ordinance 385, adopted on May 15, 2000, was soon replaced with a permanent ordinance, ordinance 400, which was then replaced with ordinance 415, which imposed similar requirements. Theoretically, a concurrency law is intended to require "a developer applying for a building permit [to] show the local governing body that the demands of the proposed development will not exceed the maximum capacity of public facilities." Adam Strachan, Note, Concurrency Laws: Water as a Land-Use Regulation, 21 J. Land Res. & Envtl. L. 435, 435 (2001).

Snyderville Basin, all in violation of both the Utah Antitrust Act, Utah Code Ann. §§ 76-10-911 to -926 (2003), and Article XII, Section 20 of the Utah Constitution.[3] For these alleged antitrust violations, the Summit Water appellants sought injunctive relief against all County appellees and compensatory and treble damages against Montgomery Watson and Jarvis.

¶6 The County appellees filed a rule 12 motion to dismiss. The district court denied this motion in relevant part in an order issued March 4, 2002, and this court denied the appellees' petition for interlocutory appeal. The district court based its denial on its conclusions that Article I, Section 26 of the Utah Constitution was a self-executing provision, that the state action immunity doctrine enunciated in Parker v. Brown, 317 U.S. 341 (1943), did not apply to actions under state antitrust laws, and that Utah Code section 76-10-915(1)(f), which exempts "municipalities" from the state antitrust act, did not apply here because "[n]either a county nor its special service districts are municipalities."

¶7 After discovery was underway, the County appellees, in January 2003, filed a motion to reconsider and to dismiss, which the district court construed as a motion to dismiss under rule 12(b)(6) of the Utah Rules of Civil Procedure. The district court issued an order on May 27, 2002, in which it reevaluated its prior legal conclusions in light of the constitutional and

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[3] The complaint also alleged violations of Article I, Sections 7 and 24 of the Utah Constitution and the Due Process and Equal Protection Clauses of the United States Constitution. The district court granted the Summit Water appellants' motion for partial summary judgment on their due process claims in May 2002. In so doing, the court declared unconstitutional county ordinances 400 and 415, which had imposed requirements on developers to form agreements with water companies having sufficient water concurrency ratings. The court reasoned that an appearance of unfairness arose from the facts that the ordinances designated the Board of County Commissioners--also Mountain Regional's governing board--as the body hearing appeals of water concurrency ratings, and that Jarvis was the County's concurrency officer as well as a Mountain Regional employee. The district court's May 2002 order is not before us on appeal. According to the County appellees, the County has since revised its ordinance to designate a state district engineer as the concurrency officer and to remove the county commission from the appeal process. Summit Water's challenge to its concurrency rating under the new ordinance is on appeal in a separate action, Summit Water v. Mountain Regional, No. 20040091-CA.

legislative historical evidence newly submitted by the County appellees. Based on its review of those materials, the district court concluded that Article XII, Section 20 was not, in fact, self-executing but was meant rather as a "strong policy statement to guide future legislative action" so as to "guard against . . . dilut[ion] or eliminat[ion] [of] the Antitrust Act in a changed political climate." The court therefore dismissed the Summit Water appellants' claims based on Article XII, Section 20.

¶8 The court then reconsidered its conclusion that counties and special service districts were not included within the "municipality" exemption contained in Utah Code section 76-10-915. While confirming that by its plain meaning the term "municipality" referred only to a city, the court determined that the legislative intent behind the municipality exemption could not be discerned based on plain meaning alone when the legislative history submitted by the County appellees cast "'doubt or uncertainty' . . . [on] the scope of the otherwise unambiguous term 'municipality.'" Reviewing the debate on the floor of the Utah Senate regarding the insertion of the municipality exemption into the Antitrust Act, the court considered significant the statement of Senator Thorpe Waddingham, who supported his floor amendment introducing the exemption by referring explicitly to the then-recently-decided United States Supreme Court case, City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389 (1978).[3]

¶9 Based on this history, the court concluded that the term "municipality," as used in the Act, "must include all units of local government within its rubric." The court then gave the

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[3] As quoted by the district court, Senator Waddingham stated that

> [o]ne of the reasons is the legislation we passed two years ago dealing with [the Intermountain Power Project]. And a recent federal case, that I have not read, but which has been called to my attention, that in some cases makes municipalities comply with certain sections of the federal antitrust legislation. This--one of the purposes, which I hope that this particular amendment would accomplish was to remove any question as to whether or not its' [sic] a[t] variance with the Interlocal Cooperation Act that we passed two years ago.

Floor Debate, 43rd Utah Leg., Gen. Sess., Feb. 5, 1979 (statement of Sen. Waddingham).

Summit Water appellants twenty days to further amend their complaint by "in good faith identify[ing] anti-competitive activities on the part of any one of the foregoing defendants that were not 'authorized or directed by state law,'" which under Utah Code section 76-10-915(1)(f) would exclude the County appellees from the scope of the municipality exemption. The court directed that, failing such amendment, the Summit Water appellants' statutory claims under the Antitrust Act be dismissed as well.

¶10 The Summit Water appellants then filed a motion for reconsideration, arguing that the district court erred in its legal analysis of the foregoing issues and in placing on the appellants the burden of pleading that the County appellees' actions were not authorized or directed by state law. In a January 5, 2004 order, the district court denied this motion, clarifying its conclusion that "for an activity to satisfy the 'authorized or directed' requirement in section 76-10-915(1)(f) of the Utah Code it is necessary only that a political subdivision act pursuant to general state statutes." The court determined that because the Summit Water appellants had failed to "allege conduct that is not described in section 76-10-915(1)(f)," they had failed to state a claim under the Antitrust Act. The court then dismissed all remaining claims of the Summit Water appellants.

¶11 The Summit Water appellants appealed the district court's final ruling, and the appeal was transferred to this court pursuant to Utah Rule of Appellate Procedure 43. This court has jurisdiction pursuant to Utah Code section 78-2-2(3)(b) (2002).

STANDARD OF REVIEW

¶12 The district court's determination that a plaintiff's complaint "fail[ed] to state a claim upon which relief can be granted," leading the court to grant the defendant's motion to dismiss under rule 12(b)(6) of the Utah Rules of Civil Procedure, is a legal conclusion that we review for correctness. Foutz v. City of S. Jordan, 2004 UT 75, ¶ 8, 100 P.3d 1171. Here, specifically, we review for correctness the district court's interpretation of Utah Code section 76-10-915, id.

ANALYSIS

¶13 The Summit Water appellants argue that (1) the district court erred in dismissing their claims under the Utah Antitrust Act, Utah Code Ann. §§ 76-10-911 to -926 (2003), because the "municipality" exemption in Utah Code section 76-10-915(1)(f)

exempts only cities from the provisions of the Act and therefore would not exempt any of the County appellees; and because the further requirement under that section that the appellees' activities be "authorized or directed by state law" also does not apply; (2) the district court erred in requiring the Summit Water appellants to plead specific conduct by the County appellees that was not "authorized or directed by state law" because the municipality exemption is an affirmative defense to an Antitrust Act claim; and (3) the district court erred in dismissing their constitutional claims because Article XII, Section 20 is an enforceable, self-executing provision. The Summit Water appellants concede that if we decide in their favor on their statutory claims, we need not address their constitutional arguments. The County appellees disagree, suggesting that we must in any case resolve the Summit Water appellants' "conten[tion] that Article XII, Section 20 trumps all the liability and damage limitations in the 1979 Act." We first examine the statutory issues.

I. THE "MUNICIPALITY" EXEMPTION TO THE UTAH ANTITRUST ACT

¶14 Utah Code section 76-10-914 defines illegal anticompetitive activities for purposes of the Utah Antitrust Act:

> (1) Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is declared to be illegal.
>
> (2) It shall be unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce.

Utah Code Ann. § 76-10-914 (2003). Section 76-10-915 exempts from this definition "the activities of a municipality to the extent authorized or directed by state law." Id. § 76-10-915(1)(f). Thus, in order for a party's activities to be exempt under section 76-10-915(1)(f) from an antitrust claim, the party must be a "municipality" and its activities must have been "authorized or directed by state law." Id. As described above, the district court held that both of these requirements were met in the case of the County appellees. The Summit Water appellants challenge its conclusion on both counts. We address each of the exemption's two requirements in turn.

A. Whether the County Appellees Are "Municipalities" Under Utah Code Section 76-10-915(1)(f)

¶15 The Summit Water appellants argue that the district court's interpretation of the word "municipality" in section 76-10-915(1)(f) to include a county, a special service district, and a private California corporation is contrary to settled principles of statutory construction, which require reliance on a word's plain meaning unless there is ambiguity. They contend that the term plainly refers to municipal corporations only--in other words, cities and towns--and that such an interpretation is in accord with a general mandate to interpret exemptions from antitrust laws narrowly.

¶16 The County appellees respond that the term "municipality" is ambiguous on its face when considered in light of conflicting definitions of the term in other statutory enactments. Furthermore, in their view, the context in which the municipality exemption was added to the Antitrust Act, together with the Antitrust Act's direction in section 76-10-926 to refer to federal law when interpreting the Act, indicates an intent by the legislature to include all units of local government within the exemption. They further contend that a narrow interpretation of the term would lead to conflict between the Antitrust Act and the Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 to -314 (2003 & Supp. 2004), insofar as the latter authorizes the creation and continuing existence of the Intermountain Power Agency (IPA), an entity formed through the cooperation of twenty-three Utah cities and towns for the purpose of constructing and operating the Intermountain Power Project (IPP).

¶17 It is well settled in this court that our goal when interpreting a statute "is to give effect to the legislative intent, as evidenced by the [statute's] plain language, in light of the purpose the statute was meant to achieve." Foutz v. City of S. Jordan, 2004 UT 75, ¶ 11, 100 P.3d 1171 (internal quotation omitted). When evaluating the plain language of a particular statutory provision, we interpret it "in harmony with other statutes in the same chapter and related chapters." Mountain Ranch Estates v. Utah State Tax Comm'n, 2004 UT 86, ¶ 11, 100 P.3d 1206 (internal quotation omitted). However, "[i]f we find ambiguity in the statute's language, we look to legislative history and other policy considerations for guidance." ExxonMobil Corp. v. Utah State Tax Comm'n, 2003 UT 53, ¶ 14, 86 P.3d 706.

¶18 Here, the parties' dispute over the interpretation of the term "municipality" in section 76-10-915(1)(f) implicates the broader question of how ambiguity in a statute's language is to

be identified. As indicated above, the district court originally determined that the word "municipality" unambiguously referred only to cities and towns. In its May 27, 2002 order, the court repeated that, in the absence of the legislative history . . . materials submitted by the County appellees, it would continue to adhere to that conclusion. Its ultimate decision to the contrary was entirely based on the additional materials submitted that, in the district court's view, indicated a legislative intent that was not apparent on the face of the statute itself.

¶19 We first consider whether we agree with the district court that the term "municipality," on its face, unambiguously refers only to cities and towns. The district court concluded that "[n]owhere has this court been able to find a definition or use of the term 'municipality' in Utah statute or constitution that, from its plain meaning, one could read as anything other than a city. Or, conversely, that one could stretch to embrace a county or its special service district." Based on our examination of the Utah Code and Constitution, there is no question that the word "municipality" is used almost exclusively to refer to municipal corporations--cities and towns. It is true, as the County appellees point out, that the former Utah Municipal Bond Act explicitly defined "municipality" to "include[] cities, towns, counties, school districts, public transit districts, and improvement districts . . ., special service districts . . ., metropolitan water districts . . ., irrigation districts . . ., water conservancy districts . . ., and regional service areas." Utah Code Ann. § 11-14-1(1) (2003) (repealed 2005). The provision clarified that that definition applied only "for the purpose of th[e] [Municipal Bond Act]." Id. The County appellees urge us to consider this definition as sufficient indication that the word "municipality" is ambiguous on its face. However, the fact that the legislature in 2005 saw fit, when amending the Act, to replace the term "municipality" with the term "local political subdivision," see ch. 105, 2005 Utah Laws § 9 (codified at Utah Code Ann. § 11-14-102(3)), may suggest the legislature's own acknowledgment that the former broad definition of "municipality" was not in accord with the term's generally accepted meaning.

¶20 The only other instance in which a Utah Code provision defines the term "municipality" to include "any county . . . or political subdivision of this state" is in section 72-10-301(4) of the Aeronautics Act, Utah Code Ann. §§ 72-10-101 to -504 (2001 & Supp. 2004). A review of the Aeronautics Act in its entirety suggests that this definition was inserted only to simplify the later definition of "public agency" in the same provision, see id. § 72-10-301(6) (including "municipalities" in the definition of "public agency"), for, despite the inclusion of counties in

that definition of municipality, other provisions in the same part of the chapter list both counties and municipalities in a manner that suggests they are separate entities, see id. §§ 72-10-303, -304.

¶21 If our review were restricted to the occurrences of the word "municipality" in the Utah Code and Constitution, we would be inclined to agree with the district court that the term on its face unambiguously refers only to municipal corporations. We do not end our analysis here, however, because, as the County appellees point out, the Antitrust Act expressly provides that "[t]he Legislature intends that the courts, in construing this act, will be guided by interpretations given by the federal courts to comparable federal antitrust statutes and by other state courts to comparable state antitrust statutes." Id. § 76-10-926. Based on this direction, we must examine antitrust law as a whole in order to determine whether the term "municipality" means something other than a municipal corporation when used in the antitrust context.

¶22 The federal antitrust law, the Sherman Act, exempts "local governments" from damage and attorney's fee penalties for federal antitrust violations. 15 U.S.C. § 35(a). The Act defines "local government" as including "a city, county, parish, town, township, village, or any other general function governmental unit established by State law," id. § 34(1)(A), as well as "a school district, sanitary district, or any other special function governmental unit established by State law in one or more States," id. § 34(1)(B). The Sherman Act thus uses the term "local government" to mean what the County appellees argue the term "municipality" means in the Utah statute. These provisions therefore do not support the County appellees' argument. Congress, however, added these provisions to the Sherman Act in 1984, Local Government Antitrust Act of 1984, Pub. L. No. 98-544, 98 Stat. 2750 (1984) (codified at 15 U.S.C. §§ 34-36), and the County appellees argue that Congress made this amendment in response to the United States Supreme Court's interpretation of the Sherman Act in a line of cases that served to limit the immunity of local governments from federal antitrust liability. We therefore examine these cases in order to determine whether they support the County appellees' proposed interpretation of the word "municipality."

¶23 We agree that the United States Supreme Court has interpreted the Sherman Act, prior to its 1984 amendment, as applying on its face to all local governmental entities. City of Lafayette v. La. Power & Light Co., 435 U.S. 389, 396-98 (1978) (recognizing that the term "person" in the Sherman Act included all entities, whether public or private, that "engaged in

business whose activities might restrain or monopolize commercial intercourse among the states" and thus included both states and cities (internal quotation omitted)). In reaching this interpretation, the Court emphasized the strong federal policy in favor of a "regime of competition," such that "the antitrust laws will not be displaced unless [they] . . . are plainly repugnant" to a "regulatory regime over an area of commercial activity." Id. at 398. The Court then indicated that implied exclusions from the Act were disfavored. Id. at 399. Reasoning that local governments serve parochial rather than national interests, the Court then concluded that

> [w]hen these bodies act as owners and providers of services, they are fully capable of aggrandizing other economic units with which they interrelate, with the potential of serious distortion of the rational and efficient allocation of resources, and the efficiency of free markets which the regime of competition embodied in the antitrust laws is thought to engender.

Id. at 408.

¶24 Unlike local governments, however, states themselves are coequal sovereigns with the federal government. Id. at 411-13. On that basis, the Court has interpreted the Sherman Act as implicitly excluding states from its application. Id. at 400 (citing Parker v. Brown, 317 U.S. 341, 351 (1943)). In City of Lafayette, a plurality of the Court further recognized that a local government falls within the Parker exemption when it acts as an agent of the state, "pursuant to state policy to displace competition with regulation or monopoly public service." Id. at 413 (plurality). The standard set forth by the City of Lafayette plurality was subsequently adopted by the Court. Cmty. Communications Co. v. City of Boulder, 455 U.S. 40, 51 (1982). Later cases have adhered to this general principle. See Fed. Trade Comm'n v. Ticor Title Ins. Co., 504 U.S. 621, 636-37 (1992); City of Columbia v. Omni Outdoor Adver., Inc., 499 U.S. 365, 372-73 (1991); Town of Hallie v. City of Eau Claire, 471 U.S. 34, 45 (1985).

¶25 We agree with the County appellees that this line of cases provides interpretative guidance in this context, but we disagree concerning its import. We are unpersuaded that the United States Supreme Court's use of the specific term "municipality" in some instances where the enunciated principles applied equally to other units of local government indicates that the term is ambiguous or has a different meaning in the antitrust

context, particularly where the entities at issue in the cases reviewed by the Court were in fact cities, as indicated in the case names above. Far from establishing that antitrust law in general uses the word "municipality" broadly, the County appellees have failed to point to a single instance where a court referred to a specific unit of local government as a "municipality" unless it was in fact a city or a town.

¶26 Moreover, we believe that the mandate in our Antitrust Act that we be guided by other courts' interpretations requires us to rely on the principles underlying those interpretations, rather than on the courts' particular word choice. When we examine the issue before us in that light, it becomes clear that the County appellees are asking us to engage in rather curious logic. They propose that, because the Court in the City of Lafayette line of cases held that the Sherman Act applies to all local governmental entities, unless they are acting as agents of the state, our Legislature must have intended to exempt all local governmental entities when they added the municipality exemption to Utah's Antitrust Act. Further, the County appellees repeat the argument, made before the district court, that the municipality exemption's purpose was to avoid incorporating the Court's decision in City of Lafayette into Utah antitrust law. Thus, according to the County appellees, we must follow the mandate that we rely on federal caselaw when interpreting the term "municipality" even as we recognize that the Legislature intended to circumvent the very federal caselaw that we are urged to follow. We decline to engage in such a tortured analysis.

¶27 The only remaining factor militating against the conclusion that the term "municipality" unambiguously refers only to municipal corporations is Senator Waddingham's statement in the floor debates, indicating his concern, when proposing the municipality exemption, about the impact of the City of Lafayette decision on the IPP. The extent to which an individual statement by a legislator is a reliable indicator of legislative intent has frequently been questioned. E.g., Wood v. Univ. of Utah Med. Ctr., 2002 UT 134, ¶ 19, 67 P.3d 436 ("Legislators may decide that a statute should be passed for myriad, often even different, reasons . . . ."). Moreover, it is far from clear to us that legislative history should be relevant when making the initial determination of whether a statutory provision is ambiguous on its face. See Berube v. Fashion Ctr., 771 P.2d 1033, 1038 (Utah 1989) (agreeing that the statute at issue "is clear on its face and should be applied accordingly, regardless of any specific intent formed by a particular legislator"). At the same time, because our primary goal is to interpret statutes in accord with legislative intent, we might hesitate to disregard entirely such an indication of intent where it was clear, even if a provision

appears to be unambiguous.[4] We do not believe Senator Waddingham's statement qualifies as such a clear indication of intent, however. The statement indicates that Senator Waddingham had not read City of Lafayette, and though the Senator specifically mentions the IPP, he does not indicate that he considers the IPP itself, or its owner, the IPA, to be a "municipality" that would be subject to antitrust legislation in the absence of the proposed exemption. Rather, Senator Waddingham, in stating that the exemption's purpose is "to cause actions taken by municipalities . . . to be on the same card as activities conducted by utilities," uses the term "municipalities" himself, making it difficult to conclude that he accorded the word a meaning other than the generally accepted definition of "municipal corporation."

¶28 Thus, as the Summit Water appellants suggest, Senator Waddingham's language is simply too vague to draw specific conclusions on these matters from his statements alone. It seems that, in order to accord Senator Waddingham's statement the significance that the County appellees suggest it deserves, we would have to engage in a full analysis of whether the IPA and IPP are otherwise subject to Utah's Antitrust Act and, if so, whether the legislature intended these entities to be free to engage in anticompetitive activities. Although the IPA, in its role as amicus in the present case, argues that both of these questions must be answered in the affirmative, and indeed that the municipality exemption was constructed with it specifically in mind, we are unwilling to undertake such a review when the IPA's status and activities are not actually at issue in the case before us.

¶29 Moreover, we believe the district court erred in according Senator Waddingham's statement such weight without considering the proper import of other interpretative principles in the antitrust context. We adhere to the fundamental principle underlying the Court's decision in City of Lafayette--that antitrust laws must be interpreted in light of the strong public policy disfavoring anticompetitive practices. City of Lafayette, 435 U.S. at 398. Indeed, our deference to this policy must be particularly strong in light of Article XII, Section 20 of our

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[4] In one treatise author's opinion, "[b]ecause issues concerning what a statute means or what a legislature intended are essentially issues of fact, even though they are decided by the judge and not by a jury, a court should never exclude relevant and probative evidence from consideration." 2A Norman J. Singer, Statutes and Statutory Construction § 45:02, at 14-15 (6th ed. 2000).

state constitution as well as the Legislature's explicit finding, set forth in the Antitrust Act itself, that

> competition is fundamental to the free market system and that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic, political and social institutions.

Utah Code Ann. § 76-10-912. Based on this policy,[5] we have previously indicated that provisions of our Antitrust Act must be strictly construed in favor of competition and that, therefore, "exemptions [from the Act] should be construed narrowly." Evans v. State, 963 P.2d 177, 185 (Utah 1998); see also Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205, 231 (1979) ("It is well settled that exemptions from the antitrust laws are to be narrowly construed. This doctrine . . . applies with equal force to express statutory exemptions."). Thus, even if we were to conclude that the term "municipality" in section 76-10-915(1)(f) is ambiguous, this interpretive principle suggests that we adopt the narrowest possible meaning of the term, limiting it to municipal corporations. See Evans, 963 P.2d at 185.

¶30 For the reasons set forth above, we cannot conclude that the term "municipality" in section 76-10-915(1)(f) is ambiguous, nor, if it were ambiguous, would we be likely to interpret the term broadly. However, we acknowledge that we are unable to perceive any logical reason for including cities and towns in the municipality exemption but excluding other units of local government. In the interest of judicial caution, therefore, we reserve an ultimate decision on the meaning of "municipality" for another day and proceed to analyze whether, assuming the County appellees would qualify as municipalities, their activities at issue here are exempt because they were "authorized or directed by state law" for purposes of Utah Code section 76-10-915(1)(f).

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[5] By referring to such a "policy," we express no opinion on the question of whether Article XII, Section 20 is self-executing.

B. Whether the County Appellees' Activities Are Authorized or Directed by State Law

¶31 Section 76-10-915(1)(f) exempts municipalities from operation of the Antitrust Act only insofar as their activities are "authorized or directed by state law." Utah Code Ann. § 76-10-915(1)(f). As described above, the district court concluded that a municipality satisfies this condition as long as it acts "pursuant to general state statutes." The Summit Water appellants argue that this broad interpretation of the "authorized or directed" language is contrary to the City of Lafayette line of cases and that the requirement is not satisfied here by general laws that give no indication that the state authorizes counties to "monopolize a private water market." The County appellees, in turn, maintaining their position regarding the purpose of the municipality exemption, argue that to interpret section 76-10-915(1)(f) in accord with City of Lafayette is to "incorporate[] into the Utah Antitrust Act precisely what the legislative history indicates that section was intended to keep out of the Act--the narrow City of Lafayette reading of local government immunity from antitrust [claims]." They further argue that their activities would be exempt under current federal law, as it has developed in the twenty-seven years since City of Lafayette.

¶32 In accord with Utah Code section 76-10-926, we first examine federal law on this issue. Again, the principle first set forth by the City of Lafayette plurality and subsequently adopted by a majority of the United States Supreme Court is that a unit of local government is exempt from federal antitrust laws only if its "anticompetitive conduct [is] engaged in as an act of government by the State as sovereign, . . . pursuant to state policy to displace competition with regulation or monopoly public service." City of Lafayette, 435 U.S. at 413 (plurality). The basis for this holding was the doctrine of dual sovereignty, under which, according to the plurality, "state action" is exempt from federal antitrust laws. Id. at 412. The plurality stated that, in order for a state's subdivision to enjoy the "state action" exemption, there must be an indication that its action is "authorized or directed" by the state, so that the subdivision is in fact acting on behalf of the state rather than its own parochial interests. Id. at 414-15. The plurality then concluded that "an adequate state mandate for anticompetitive activities of . . . subordinate governmental units exists when it is found from the authority given a governmental entity to operate in a particular area, that the legislature contemplated the kind of action complained of." Id. at 415 (internal quotation omitted).

¶33 As an initial matter, we point out that, were we facing the same question considered by the Court in City of Lafayette and its successor--namely, whether to read an implicit exemption into antitrust law--we might well conclude that the Court's analysis in those cases was inapplicable because the dual sovereignty considerations that motivated the Court's reasoning in those cases are entirely absent when a state court is considering state antitrust laws. See Fine Airport Parking, Inc. v. City of Tulsa, 2003 OK 27, ¶ 19, 71 P.3d 5; Town of Hallie v. City of Chippewa Falls, 314 N.W.2d 321, 324 (Wis. 1982). The latter situation involves a potential conflict "'between the state laws dealing with municipalities and the state antitrust law,'" Fine Airport Parking, Inc., 2003 OK 27 at ¶ 19 (quoting Town of Hallie, 314 N.W. 2d at 324); in other words, the laws at issue in our case are those of a single sovereign--the state.

¶34 Unlike the state antitrust statutes involved in these Oklahoma and Wisconsin cases, section 76-10-915 of the Utah Antitrust Act includes an explicit statutory exemption for municipalities. Utah Code Ann. § 76-10-915(1)(f). A number of other state antitrust laws also contain statutory exemptions, leading courts in those states simply to apply the plain language of these exemptions. See, e.g., Miller's Pond Co. v. City of New London, 873 A.2d 965, 979-80 (Conn. 2005) (reaffirming that its statutory antitrust exemption for actions "specifically directed or required" by a state statute was intended to be more stringent than the federal "authorized or directed" standard and therefore holding that the federal standard was inapplicable); Alarm Detection Sys., Inc. v. Village of Hinsdale, 761 N.E.2d 782, 793 (Ill. App. Ct. 2001) (relying on the "plain language of [the statutory exemption in] the [Illinois] Antitrust Act in determining whether the Village was immune from liability").

¶35 Here, Utah's statutory exemption is, as far as we are aware, unique in that it is defined using language--"authorized or directed"--identical to that used by the City of Lafayette plurality. Utah Code Ann. § 76-10-915(1)(f) (exempting a municipality "to the extent authorized or directed by state law"); City of Lafayette, 435 U.S. at 414 (concluding that a municipality engages in state action when "the State authorized or directed [it] to act as it did"). This identical language, together with the mandate set forth in section 76-10-926 that our interpretations be guided by federal caselaw, indicate to us that the Legislature intended the "authorized or directed" standard in section 76-10-915(1)(f) to coincide with federal courts' interpretation of "authorized or directed" when delineating the

municipality exemption to federal antitrust laws.[6] The conclusion indicated by the plain language of these provisions is further supported by the fact that the Court's observations in City of Lafayette, in regard to the tendency of local governments to act in their own parochial interests rather than in the interest of the state as a whole, see 435 U.S. at 408, would appear of equal concern to the state itself. See Evans, 963 P.2d at 185 (recognizing the legislative intent that "those anticompetitive activities that have been approved by the state or federal government should not be punished by the [Utah Antitrust] Act"); see also Reppond v. City of Denham Springs, 572 So. 2d 224, 228 (La. Ct. App. 1990) ("Because municipalities perform many functions in both a private and a public sense, it would be imprudent to categorically reject the applicability of the anti-trust statutes to every act of such governmental entities."). It is thus not unreasonable for the legislature to have intended us to follow federal antitrust law on this issue even though the federal analysis originates in inapplicable notions of dual sovereignty.[7] Consequently, while we would

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[6] Our conclusion here is not inconsistent with our refusal above to interpret the term "municipality" to include all units of local government in accord with the federal state action exemption. As we explained above, federal antitrust law does not ascribe a unique meaning to the word "municipality." In contrast, City of Lafayette used the phrase, "authorized or directed," in the course of setting forth a distinct legal standard. The latter phrase, therefore, does have a unique meaning in federal antitrust law. Moreover, the implication of our holding is that the Utah Legislature simply imported the exemption recognized in City of Lafayette into the Utah Antitrust Act rather than trying to avoid the federal law, as the County appellees have argued.

[7] The County appellees bolster their argument that the Utah Legislature was "actively hostile" to the Court's rulings in City of Lafayette and City of Boulder by reference to its enactment of section 76-10-919(4) and (5), which prohibits damage awards against political subdivisions that violate the Antitrust Act. Utah Code Ann. § 76-10-919(4), (5). As the County appellees note, this provision mirrors the federal statute enacted by Congress in 1984, which similarly bars damage awards against local governments. Local Government Antitrust Act of 1984, 15 U.S.C. §§ 35-36. In our view, the Legislature's passage of section 76-10-919 is simply another example of its close adherence to federal antitrust law. This strengthens our conclusion that the "authorized or directed" language in section

(Footnote continued on next page.)

hesitate to infer a "state action" exemption from our state antitrust law where no such exemption is expressly provided, here we conclude that the legislature has in fact expressly included such an exemption in the state antitrust laws, and we therefore analyze the exemption's applicability relying on federal caselaw for guidance.

¶36 Following City of Lafayette, the United States Supreme Court in Town of Hallie reaffirmed that, in order to be eligible for the state action exemption, a municipality must "show that it acted pursuant to a 'clearly articulated and affirmatively expressed . . . state policy'" to displace competition. 471 U.S. at 39 (quoting City of Lafayette, 435 U.S. at 410). The standard is satisfied when the anticompetitive conduct alleged by the plaintiff "is a foreseeable result" of a state's grant of authority in a particular area. Id. at 42. Thus, in Town of Hallie, the Court held that state statutes authorizing a city to provide sewage services outside the city limits and to determine which areas it would serve sufficiently articulated a state policy that would allow the city to refuse sewage service in a particular area unless the landowners in that area voted in favor of annexation to the city. Id. at 37, 42-43. The Court in City of Columbia later held that state zoning laws that "authorize[d] municipalities to regulate the use of land and the construction of buildings and other structures within their boundaries," including their size, location, and spacing, were sufficient to immunize a city's ordinances limiting billboard placement. 499 U.S. at 370-73 & n.3. Adhering to the "foreseeable result" standard, the Court reasoned that "[a] municipal ordinance restricting the size, location, and spacing of billboards . . . necessarily protects existing billboards against some competition from newcomers," and that the anticompetitive conduct complained

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[7] (Footnote continued.)
76-10-915(1)(f) was similarly intended to parallel federal law. Moreover, while the County appellees maintain that the Supreme Court's decisions caused "considerable consternation" in Congress and that it was this "aversion" to the Supreme Court's decisions that led to the passage of the Local Government Antitrust Act and to section 76-10-919, it seems significant that neither Congress nor the Utah Legislature simply declared all local governmental entities exempt from antitrust laws in these provisions. Their actions in limiting monetary damages while failing to grant a complete exemption appears to signal acquiescence in, and possibly even approval of, the idea that local governments may have to comply with orders of injunctive relief if their anticompetitive actions violate antitrust provisions.

of by a newcomer billboard company was thus foreseeable. Id. at 373.

¶37 The County appellees make much of the idea that City of Columbia substantially broadened the scope of federal antitrust immunity for municipalities, reversing the "aggressive narrowing" of such immunity that, in their view, was imposed by City of Lafayette. They thus argue that we should follow the same broad interpretation that, they maintain, the Court has now adopted. The Summit Water appellants disagree with the County appellees in regard to whether municipalities were altogether exempt from federal antitrust laws before the Court's ruling in City of Lafayette. They further contend that City of Columbia adhered to the same standard for construing the municipality exemption that was originated in City of Lafayette and followed in Town of Hallie.

¶38 Having reviewed the line of federal Supreme Court cases from City of Lafayette to City of Columbia and the opinions of lower courts construing them, we see no clear indication that the Court in City of Columbia intended to broaden its previously-adopted standard. The Court's primary concern in its discussion of the municipality exemption standard in that case was to clarify that a federal court applying the exemption need not determine whether a municipal act is "substantively and procedurally correct" under state law in order to conclude that the act was taken pursuant to a state policy to displace competition. City of Columbia, 499 U.S. at 371-72 (internal quotation omitted). To require federal courts to engage in such scrutiny of state law would, the Court explained, "undermin[e] the very interests of federalism [the state action immunity doctrine] is designed to protect." Id. at 372.

¶39 This clarification thus did nothing to alter the range of state authorization that suffices to immunize anticompetitive municipal actions from antitrust laws. The outer boundaries of that range are found in two basic principles that the Court has consistently acknowledged. First, "the requirement of 'clear articulation and affirmative expression' is not satisfied when the State's position is one of mere neutrality respecting the municipal actions challenged as anticompetitive. A state that allows its municipalities to do as they please can hardly be said to have 'contemplated' the specific anticompetitive actions for which municipal liability is sought." City of Boulder, 455 U.S. at 55 (holding that a neutral grant of home rule authority to municipalities could not constitute a state "policy" to displace competition in the provision of cable television services); see also Town of Hallie, 471 U.S. at 43 (concluding that specific statutory authorization to municipalities to provide sewage

services outside city boundaries was not "neutral on state policy"). Second, however, the municipality need not show "a specific, detailed legislative authorization" to engage in the particular anticompetitive conduct at issue. City of Lafayette, 435 U.S. at 415 (plurality); see also City of Columbia, 499 U.S. at 372 ("We have rejected the contention that th[e] ["clear articulation"] requirement can be met only if the delegating statute explicitly permits the displacement of competition."); Town of Hallie, 471 U.S. at 43-44 (rejecting the idea that "a legislature must expressly state in a statute or its legislative history that the legislature intends for the delegated action to have anticompetitive effects"); id. at 45 (rejecting the idea that the municipality must "show that the State 'compelled' it to act").

¶40 The "foreseeability" inquiry that the Court settled on in Town of Hallie, 471 U.S. at 42, and in City of Columbia, 499 U.S. at 373, ensures that the required state authorization falls somewhere between these two poles. Subsequent decisions of lower federal courts have thus focused on whether the anticompetitive action alleged is a "foreseeable result" of state statutes. See Elec. Inspectors, Inc. v. Vill. of E. Hills, 320 F.3d 110, 121 (2d Cir. 2002) (concluding that "the plaintiff's complete exclusion from the market for required electrical inspection services . . . . is a foreseeable result of a statute that requires municipalities to enforce a uniform fire code and administrative regulations that condition the issuance of certificates of occupancy upon inspections by town-designated agents"); Mich. Paytel Joint Venture v. City of Detroit, 287 F.3d 527, 536 (6th Cir. 2002) (concluding that a city's facilitation of a private telephone company's monopoly by accepting its bid to install and service pay telephones in city prisons was "the logical and foreseeable result of the City's broad authority under state law and the Michigan Constitution to bid out public contracts for the maintenance of City prisons"); Surgical Care Ctr. v. Hosp. Serv. Dist. No. 1, 171 F.3d 231, 235 (5th Cir. 1999) (en banc) (concluding that a hospital service district's alleged exclusivity and tying agreements that aimed to exclude a private hospital from the market for outpatient surgical care were "not the foreseeable result of allowing a hospital service district to form joint ventures").

¶41 We therefore hold that the district court erred in concluding that "for an activity to satisfy the 'authorized or directed' requirement in section 76-10-915(1)(f) of the Utah Code it is necessary only that a political subdivision act pursuant to general state statutes." Rather, a court must examine the particular statutes at issue and then engage in the foreseeability analysis set forth above. Here, the question is

thus whether the alleged price-fixing, agreements tying Mountain Regional water distribution to the grant of building permits and planning approvals, and other anticompetitive activities are the "foreseeable result" of the authority granted the County appellees under state law.

¶42 We first set forth the provisions that, according to the County appellees, grant the necessary authority. The County appellees cite provisions in the County Land Use, Development, and Management Act (CLUDMA)[1] and the Utah Special Service District Act, Utah Code Ann. §§ 17A-2-1301 to -1332 (2004), as providing the County appellees with authority to act and articulating a state policy to displace competition in the area of culinary water distribution. The CLUDMA provisions that, according to the County appellees, are comparable to those found sufficient in City of Columbia are as follows. Section 17-27a-102 provides that

> counties may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the unincorporated area of the county, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, and height and location of

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[1] The parties cite to the version of CLUDMA in effect at the time they submitted their briefs. See Utah Code Ann. §§ 17-27-101 to -1003 (2001 & Supp. 2004) (repealed 2005). In the 2005 legislative session, the Act was renumbered and revised. See Utah Code Ann. §§ 17-27a-101 to -803 (Supp. 2005). While generally we consider the law in effect at the time a claim arises or is brought in court, see State v. One Lot of Pers. Prop., 2004 UT 36, ¶¶ 13-17, 90 P.3d 639, current law is relevant when injunctive relief is requested, see Nat'l Coalition to Save Our Mall v. Norton, 269 F.3d 1092, 1096-97 (D.C. Cir. 2001) (citing Miller v. French, 530 U.S. 327 (2000)). Because injunctive relief is requested here, we consider the current version of the CLUDMA in our analysis.

vegetation, trees, and landscaping, unless expressly prohibited by law.

Utah Code Ann. § 17-27a-102(1)(b) (Supp. 2005). Section 17-27a-301 requires that every county "enact an ordinance establishing a countywide planning commission." Id. § 17-27a-301(1)(a). Section 17-27a-401 requires that every county "prepare and adopt a comprehensive, long-range general plan" that "may provide for . . . the efficient and economical use, conservation, and production of the supply of . . . water." Id. § 17-27a-401(1), (2)(c)(i).

¶43 The provisions of the Special Service District Act that the County appellees assert are relevant authorize a county to "establish a special service district for the purpose of providing [water] within the area of the special service district." Id. § 17A-2-1304(1)(a)(i) (2004). "The area within any special service district may include all or any part of the county . . . that established it except that . . . a special service district may not include any area not directly benefitted by the services provided under this section without the consent of the nonbenefitted landowner." Id. § 17A-2-1304(2)(a)(iii). The scope of the service district's authority then includes, among other things, "[t]he power to exercise all powers of eminent domain possessed by the county . . . which established" it, "[t]he power to enter into contracts . . . to carry out [its] functions," and "[t]he power to acquire or construct facilities." Id. § 17A-2-1314(1)(b), (c), (d).

¶44 Although these provisions clearly contemplate a county's establishment of a water service district, such as Mountain Regional, and grant both counties and special service districts certain powers, lacking from the statutes is any suggestion that a county might use its planning or zoning authority to facilitate the operation or growth of special service districts once they are created. In particular, the general grant of authority to counties contained in section 17-27a-102 allows counties to enter into "development agreements" in a number of areas but does not mention the provision of water or other utility services. Id. § 17-27a-102(1)(b) (Supp. 2005). Unlike in Town of Hallie, where a town's requirement that unincorporated areas annex themselves to the town was a prerequisite to supplying sewage services, 471 U.S. at 43, the allegation here is that developers are precluded from proceeding with their development unless they accept Mountain Regional water services; in Town of Hallie, desired services were tied to acceptance of incorporation within the governmental entity that provided those services while in our case, developers are allegedly forced to accept services they may or may not desire.

The Special Service District Act itself appears to prohibit a service district from incorporating a nonbenefitted landowner's property without the landowner's consent. Utah Code Ann. § 17A-2-1304(2)(a)(iii) (2004).

¶45 We can find no other statute within either of these Acts that contemplates any connection between a county's development activities and its favoring of special service districts that it has established. The statutory scheme does not reveal a state policy of allowing counties to displace competition with a special service district unless the special service district is successful through its own competitive efforts in acquiring an exclusive market share within its area. Other courts have similarly noted that a state's grant of authority to a government entity or utility to provide a natural resource does not necessarily indicate an intent to immunize the entity or utility from antitrust laws. See Cantor v. Detroit Edison Co., 428 U.S. 579, 595-96 (1976) ("There is no logical inconsistency between requiring [a private utility] to meet regulatory criteria insofar as it is exercising its natural monopoly powers and also to comply with antitrust standards to the extent that it engages in business activity in competitive areas of the economy."); Parks v. Watson, 716 F.2d 646, 663 (9th Cir. 1983) ("[M]erely because the state may authorize a city to be the sole supplier of a natural resource and to set prices for that resource, it does not necessarily follow that the city is immunized from antitrust liability when it attempts to tie the purchase of a non-monopolized product or service to the sale of that natural resource."). We therefore conclude that the anticompetitive activities alleged by the Summit Water appellants, including the act of tying building permit and planning approvals for developers and others to acceptance of Mountain Regional as the development's water provider, are not a foreseeable result of the statutory scheme.[9]

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[9] We note, however, that anticompetitive effects resulting from activities that any of the County appellees undertake in the ordinary course of performing their authorized duties, where there are no uncontemplated ties between county and special service district functions, might be considered foreseeable. Moreover, we recognize that the Court in City of Columbia rejected a "conspiracy" exception to the municipality exemption. 499 U.S. at 379 (refusing to "allow plaintiffs to look behind the actions of state sovereigns to base their claims on 'perceived conspiracies to restrain trade'" and reaffirming that, "with the possible market participant exception, any action that qualifies as state action" under the foreseeability test is "exempt from

(Footnote continued on next page.)

¶46 Accordingly, even assuming without deciding that the County appellees qualify as "municipalities" under Utah Code section 76-10-915(1)(f), they would not be entitled to the municipality exemption contained in that subsection because their alleged anticompetitive conduct is not "authorized or directed by state law." We therefore reverse the district court's dismissal of the Summit Water appellants' complaint on that basis.[9]

II. WHETHER THE EXEMPTIONS IN SECTION 76-10-915 ARE AFFIRMATIVE DEFENSES

¶47 We further reverse the district court in regard to its requirement that the Summit Water appellants amend their pleadings to assert specifically that the anticompetitive activities alleged were not authorized or directed by state law. The structure of the Utah Antitrust Act, together with federal antitrust caselaw, make clear that the exemptions in Utah Code section 76-10-915(1)(f) are to be pleaded by a defendant as an affirmative defense. See Utah R. Civ. P. 8(c) ("In pleading to a preceding pleading, a party shall set forth affirmatively . . . any . . . matter constituting an avoidance or affirmative defense."). Section 76-10-915 states that other provisions of the Antitrust Act must not "be construed to prohibit" the activities that it lists, including "the activities of a municipality to the extent authorized or directed by state law." Utah Code Ann. § 76-10-915(1)(f). The County appellees argue that this language distinguishes the antitrust exemptions from a proper affirmative defense because in the case of the exemptions, "[t]he cause of action never arises in the first instance." We do not agree that there is a meaningful distinction in that regard between the exemptions listed in section 76-10-915 and other affirmative defenses. There is no legitimate cause of

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[9] (Footnote continued.)
the operation of the antitrust laws").

[10] Because we conclude that the actions alleged by the Summit Water appellants are not "authorized or directed by state law" under section 76-10915(1)(f), we need not address the Summit Water appellants' additional argument that the municipality exemption does not apply to the County appellees because they are acting as market participants. As noted above, City of Columbia left open the question of whether the municipality exemption would apply when the municipality is acting as a market participant. 499 U.S. at 379. Further, the Summit Water appellants' claim that Senator Waddingham's affidavit was inappropriately excluded is moot under our conclusion here.

action against an individual who kills another in self-defense, for example, but a murder defendant is nevertheless required to assert self-defense as an affirmative defense. See Utah Code Ann. § 76-2-402 (2003); State v. Starks, 627 P.2d 88, 92 (Utah 1981).

¶48 The line of federal Supreme Court cases since City of Lafayette indicates that the municipality exemption is regarded as an affirmative defense. See, e.g., City of Columbia, 499 U.S. at 369 (indicating that the municipality exemption was asserted by the defendants in a motion for judgment notwithstanding the verdict); id. at 372 (referring to the doctrine at issue as "the Parker[v. Brown, 317 U.S. 341 (1943)] defense"). Moreover, as the County appellees concede, the burden is on the municipality to "demonstrate that it is engaging in the challenged activity pursuant to a clearly expressed state policy" to displace competition. Town of Hallie, 471 U.S. at 40. It would make little logical sense to require plaintiffs to specifically plead a matter in the negative that the defendants would then be required to prove to the contrary in order to prevail against the plaintiffs on that ground.

III. CAUSE OF ACTION UNDER UTAH CONSTITUTION ARTICLE XII, SECTION 20

¶49 As indicated above, the parties disagree as to whether we need determine whether Article XII, Section 20 is self-executing when we have already determined that the Summit Water appellants may proceed with their statutory claim under the Utah Antitrust Act. While the Summit Water appellants suggest that we need not reach the constitutional issue, the County appellees allege that we must resolve the issue of whether the constitutional provision "trumps all the liability and damage limitations in the 1979 Act." We accept the concession of the Summit Water appellants for the following reasons. First, the County appellees have not provided any specific citation to the record where we might find the assertion that they ascribe to the Summit Water appellants. The amended complaint submitted by the Summit Water appellants does list Article XII, Section 20 as a parallel basis, together with the Utah Antitrust Act, for awarding injunctive relief against the County appellees and damages against Montgomery Watson and Jarvis. The complaint does not suggest, however, that the constitutional provision "trumps" the statute in this regard.

¶50 Second, the Summit Water appellants lost on the issue of the proper interpretation of Article XII, Section 20 below. Their concession on that point, if we decide in their favor on the statutory issue, suggests that they do not consider a

constitutional right of action essential to their complaint as long as their statutory claim is intact. Our settled policy is to avoid giving advisory opinions in regard to issues unnecessary to the resolution of the claims before us. Savage v. Utah Youth Vill., 2004 UT 102, ¶ 25, 104 P.3d 1242. We therefore decline to analyze whether Article XII, Section 20 is self-executing.

CONCLUSION

¶51 We reverse the district court's dismissal of the Summit Water appellants' claims under section 76-10-914 of the Utah Antitrust Act. We hold that, even assuming the defendants qualify as "municipalities" for purposes of section 76-10-915(1)(f), the activities at issue here were not "authorized or directed by state law," and defendants are therefore not exempt from the requirements of the Utah Antitrust Act. We further reverse the district court's order requiring the Summit Water appellants to specifically plead that the activities they allege are not authorized or directed by state law because we hold that the exemptions in section 76-10-915 constitute affirmative defenses, which must be pleaded by a defendant. Finally, because we decide in favor of the Summit Water appellants on their statutory claim, we do not consider whether Article XII, Section 20 of the Utah Constitution is self-executing.

¶52 Associate Chief Justice Wilkins, Justice Durrant, Justice Parrish, and Judge Willmore concur in Chief Justice Durham's opinion.

¶53 Having recused himself, Justice Nehring does not participate herein; District Judge Thomas Willmore sat.

AGENDA ITEM 6

SRF/CONSERVATION COMMITTEE REPORT

DIVISION OF DRINKING WATER
STATE LOAN FUNDS
CASH BALANCE AS OF MARCH 31, 2007

All interest payment and investment earning are deposited to the Hardship Grant Fund

State Loan Funds

Cash balance
less committals
(Cash balance as of 3/31/07 -
does not include projected cash
payments*)

$3,495,945

State Hardship Grant Funds

Cash balance
less committals
(Cash balance as of 3/31/2007
-does not include projected cash
payments*)

$170,917

Total Funds Available $3,666,862

The sales tax maximum is $3,587,500

*Projected repayments Mar 1, 2007 to Feb 28, 2008

1- principal payments $2,758,761 plus interest $652,241.
2- investment earings $540,000.
3- FY2007 sales tax $3,587,500.

Total Funds Available Including Projected $11,205,364

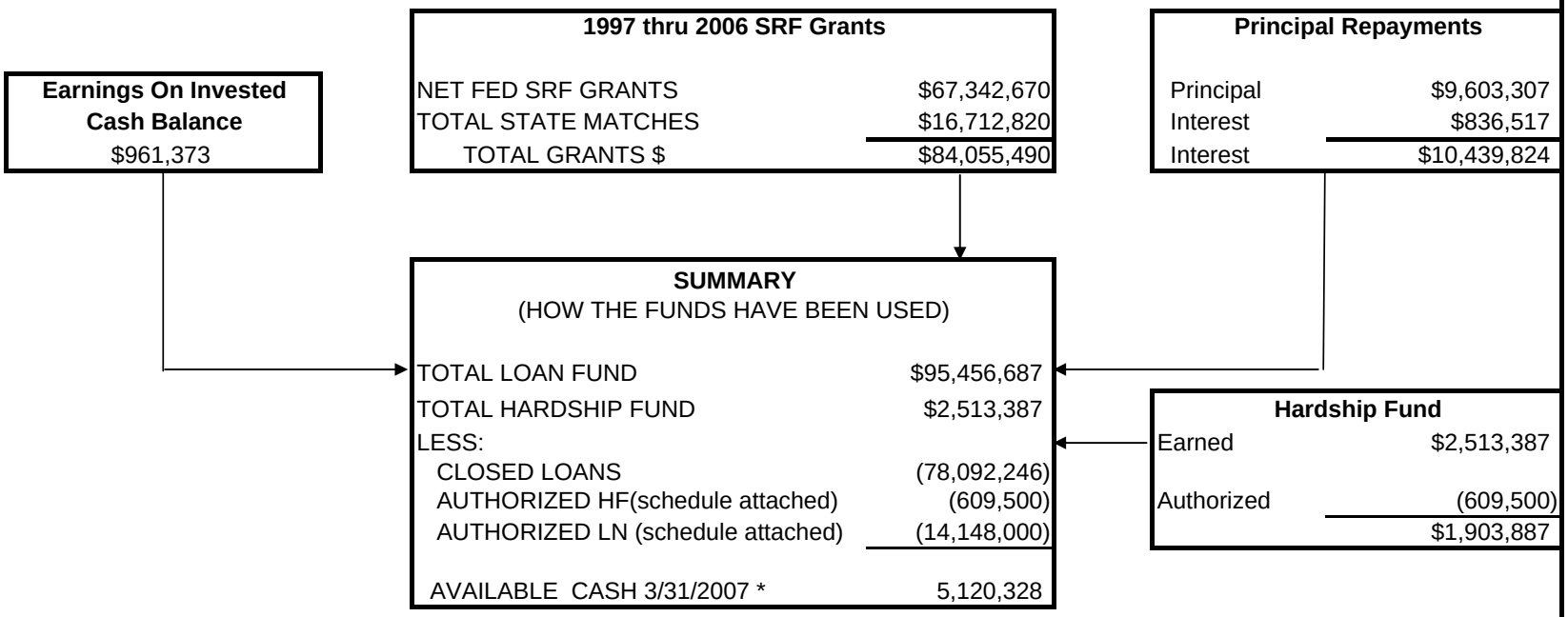
DIVISION OF DRINKING WATER
STATE LOAN FUNDS
PROJECTS AUTHORIZED BUT NOT YET FUNDED
AS OF MARCH 31, 2007

		Cost	Date	Date	Authorized Funding		
Community	Loan #	Estimate	Authorized	Closed/Anticipated	Loan	Grant	Total
Garden City 2.31% 20 yr*	3S048	2,700,000	Sep-02	Spring 07	$1,746,000		$1,746,000
West Erda 0% 20 yr	3S074	760,000	Jun-04	?	380,000	380,000	760,000
Vernon 0% 30 yr	3S090	1,124,000	Mar-06	Apr-07	686,000	391,000	1,077,000
Clarkston 2.74% for 20 yr	3S098	785,000	Nov-06	Apr-07	705,000		705,000
Glen Canyon SSD @ 0% 20 yr	3S101	850,000	Nov-06		484,000	327,000	811,000
Orderville 2.22% 30 yr	3S099	3,918,000	Nov-06		1,569,000	600,000	2,169,000
Escalante 2.46% 30 yr	3S104	2,160,896	Mar-07	Aug-07	1,560,000	600,896	2,160,896
PLANNING LOANS/GRANTS							
Enterprise (planning loan 0% 5 yr)	3S092	7,000	May-06		7,000		7,000
Austin (planning grant)	3S102	14,000	Jan-07			14,000	14,000
Wellington (pl loan 2% 5 yr)	3S104	40,000	Mar-07		40,000		40,000
							0
Total authorized but not yet funded					$7,177,000	$2,312,896	$9,489,896
FY 2007 Federal SRF 20% match					$1,645,880		$1,645,880
DDW Board Admin Fee					129,300		129,300
Grand Total					$8,952,180	$2,312,896	$11,265,076
Recently Closed:							
Circleville (planning loan 0% 5 yr)	3S097	20,000	Nov-06	Pd 3/9/2007	20,000		20,000
Teasedale (planning loan)	3S100	16,000	Nov-06	Closed & Pd 2/20/07	16,000		16,000
Gunlock 3.33% @ 20 yr	3S094	760,000	Jul-06	Closed 3/13/07	263,000	86,000	349,000
*Garden City BAN $254,000							

DIVISION OF DRINKING WATER

FEDERAL SRF

AS OF March 31, 2007



Projected receipts next twelve months:

Payment:	
2007 Fed SRF Grant	$6,583,520
State 20% Match for FY 2007	$1,645,880
Interest on Investments	$366,000
Principal payments	$3,036,200
Interest	$549,542
Hardship fees	$570,914
Total	$12,752,056

Total Estimated Federal SRF Funds Available through 3/31/2008 **$17,872,384**

*The remaining federal cap grant fund balance available for projects currently under construction totals approximately $14,500,000

DIVISION OF DRINKING WATER
FEDERAL SRF
PROJECTS AUTHORIZED BUT NOT YET CLOSED
AS OF MARCH 31, 2007

Community	Project			Authorized	Closing Date	Authorized From Loan Funds			Hardship
	Total	Terms	Loan #	Date	Scheduled	Loan	Forgiveness	Total	Fund
Central Iron WCD Ph II	7,870,250	2.17% int 20 yrs	3F063	Nov-06	Jun-07	3,425,000		3,425,000	
Croydon 20 yrs	334,000	0% int 20 yrs	3F037	Aug-04	Jan-08	327,000		327,000	
Enterprise	184,000	n/a	3F049	Mar-05	Feb-07			0	15,000
Logan #3	9,545,000	0.8% int 20 yrs	3F052	May-05	Oct-07	3,000,000		3,000,000	
Portage	1,090,500	2.57% int 20 yrs	3F054	Sep-05	Feb-07	441,000		441,000	544,500
St George	15,000,000	1.77% int 20 yrs	3F047	Mar-05	Jan-08	6,000,000		6,000,000	
Twin Creeks #2	1,200,000	0% int 30 yrs	3F028	Apr-03	Jul-07	360,000	90,000	450,000	
Woodland Kolob Acres	450,000	3.63% int 15 yrs	3F048	Mar-05	?	450,000		450,000	
Total Construction:						**$ 14,003,000**	**$ 90,000**	**$ 14,093,000**	**$ 559,500**
Planning Advances (Grant/Loan) Authorized:									
Beaver Dam Water	20,000	planning loan	3F062	May-06	May-07	20,000		20,000	
Centerfield	50,000	planning grant	Unknown	Nov-06				0	50,000
Greenwich	20,000	planning loan	3F065	Sep-06	Apr-07	20,000		20,000	
Leeds Domestic WUA	15,000	planning loan		Mar-07		15,000		15,000	
Total Planning:						**$55,000**		**$55,000**	**$50,000**
TOTAL AUTHORIZED LOANS AND GRANTS								**$14,148,000**	**$609,500**
Recent Loan Closings:									
Erda Acres	20,000	planning grant	3F064	Sep-06	pd 3/5/2007			0	20,000
Central Iron WCD	75,000	planning loan	3F063	Sep-06	pd 3/22/2007	74,438		74,438	

6. 1) a) PRIORITY PROJECT LIST

Presented to the Drinking Water Board
May 11, 2007

PROJECT PRIORITY LIST

One applicant has been added to the Project Priority List, Skyline Mountain Special Service District.

Skyline Mountain Special Service District scored 8.5 points. The current system serves 3 areas within the Skyline Mountain Resort, however, Area 3 currently is not served by the water system. The proposed project would provide water to the year round residents of Area 1 and the seasonal residents of Areas 2 and 3. While Area 1 is listed as a year round community, only 35 of the 321 lots are being used year round. The Skyline Mountain Special Service District is considered a second home community which is why they received so few points on the Project Priority List. Proposed project cost is $8,067,331.

The Drinking Water Board approve's the updated Project Priority List.

March 1, 2007

Utah Federal SRF Program

Project Priority List

Total Requested $193,736,790 for Projects totaling $284,512,401 Authorized $85,016,700

	Priority Points	System Name	County	Pop.	ProjectTitle	Project Total	Request DWB	Funds Authorized	Project Segments Sour	Treat.	Stor.	Dist	Partial Eligibility Question	Avg. of App. Proj. Seg's.	Avg. Monthly Water Bill	Median AGI
A	54.3	TWIN CREEKS SSD … ... 3F028	Wasatch	54	Source Redev, Treat., Stor., Distr	$700,000	$450,000	$450,000	50	40	50	75		53.75	$11.95	$15,000
A	51.0	CENTRAL IRON CO WCD	Iron	2,082	Regionalization	$7,793,250	$3,500,000	$3,500,000			25	75				
A	36.3	St. George 3F047	Washington	50,000	Arsenic Treatment of Gunlock Wells	$21,550,000	$10,000,000	$6,000,000		25				25	$41.43	$27,898
	33.3	TOOELE CO SPECIAL SERV DIST	Tooele		Source, Trans, Treatment, & Storage	$500,000	$365,000		60	65	45	30		50	$20.15	$35,608
A	28.8	LOGAN CITY 3F052	Cache	44,970	DeWitt Sprgs Transmission Line	$9,200,000	$9,200,000	$3,345,000	N/A	N/A	N/A	30		30	$23.17	$23,745
	22.5	ALTA TOWN	Salt Lake	367	Treatment (Antimony)	$531,300	$425,000			25				25	$20.23	$22,032
A	19.2	CROYDON PIPELINE CO. 3F037	Morgan	60	New Well	$250,000	$250,000	$327,000	18					18	$37.50	$34,479
A	15.6	WOODLAND & KOLOB ACR 3F048	Washington	?	Storage Tank,Pipeline,Pumphouse,Rights	$296,700	$296,700	$450,000	20	n/a	25	20		21.67	$25.78	$35,000
A	14.0	PORTAGE TOWN 3F054	Box Elder	276	waterline	$1,535,000	$1,535,000	$1,090,500	0		20	30		20	$25.00	$29,309
	7.8	WOODS CROSS	Davis	5,378	Equip. Well	$200,000	$150,000		18					18	$10.36	$30,494
N	5.0	SKYLINE MOUNTAIN SSD	Sanpete													

EMERGENCY FUNDING

A	100.0	WASHINGTON CO DISASTER	Washington	60,000+	Source & Piping Restoration	$1,300,000	$1,000,000		**Secured $1M to fund all Emergency from Floods of 20**
A	100.0	ENTERPRISE 3F049			Flood			$15,000	**Auth. as Hardship, not been released.**
A	100.0	GUNLOCK 3F043			Flooding			$205,000	**Deposited 6/05.**
A	100.0	ST. GEORGE			Flooding	$337,500	$337,500	$337,500	**Deposited 3/05.**

UPDATE: The Garden City and Centerfield Projects have been funded using other funds such as State or STAG. Therefore they have been removed from the PPL.

A = Authorized for funding
N = New Application

S = Changed to State Program

W = Applicant withdrew request

6. 1) b) LOAN ORIGINATION FEE AND REAUTHORIZATION OF LOANS THAT HAVE NOT BEEN CLOSED

DRINKING WATER BOARD
CONSTRUCTION LOANS ONLY
INTRODUCTION TO DRINKING WATER BOARD

INTRODUCTION TO THE LOAN ORIGINATION FEE – SRF PROGRAM:

The purpose of the loan origination fee is to pay for the administration costs of the program, making the program self-sufficient, and to reduce the costs of tracking, billing, and collecting program expenses. The 2007 State Legislature passed HB99 which amended the authority of the Drinking Water Board to, among other things, charge a "Loan Origination Fee" on all SRF loans.

Currently, staff charge some of their time spent on each project to a specific project code (or loan number) for each applicant. Then, on a quarterly or semi-annual basis each applicant is billed. The problems with the current system are:

a. Staff charge only part of their time to the applicant. They charge most of their time against "general funds".
b. No funding is provided by the Legislature to administer the program, so when a person does not charge the applicant, he/she charges the time against "general funds" which have become over taxed (scarce).
c. The Division has unnecessary expenses for the time it takes to prepare invoices, bill applicants, collect and handle receipts, and write off expenses for loans that do not close.

The purpose of the loan origination fee is to keep the two SRF programs as consistent as possible and to keep the Drinking Water program activities solvent. The fee was authorized by the 2007 State Legislature, as noted above.

STAFF COMMENTS AND RECOMMENDATION:

The Board authorize staff to post proposal to adopt a Loan Origination Fee for 30-day public comment period as described below.

The Board reauthorize all of the State SRF and Federal SRF loans listed in the two attached tables with the addition of a Loan Origination Fee, as follows:

a. The fee would be 0.50% of the principle amount of the loan at the time of closing.
b. The fee would be due and payable by the applicant at loan closing.
c. If the applicant closes the loan prior to the completion of the 30-day period, the applicant may elect to have the Division bill the applicant on a quarterly or semi-annual basis for the cost of administering the project, including pre-closing, construction oversight, and closeout charges in lieu of requiring payment of the loan origination fee at loan closing.
d. The Board may change the amount of the Loan Origination Fee, at it's discretion.

DIVISION OF DRINKING WATER

STATE LOAN FUNDS

PROJECTS AUTHORIZED BUT NOT YET FUNDED

AS OF MARCH 31, 2007

Community	Date Authorized	Date Closed/Anticipated	Loan Amount	Loan Origination Fee				
				0.50%	0.60%	0.65%	0.75%	1.00%
Garden City 2.31% 20 yr*	Sep-02	Spring 07	$2,000,000	$10,000	$12,000	$13,000	$15,000	$20,000
West Erda 0% 20 yr	Jun-04	?	$380,000	$1,900	$2,280	$2,470	$2,850	$3,800
Vernon 0% 30 yr	Mar-06	Apr-07	$686,000	$3,430	$4,116	$4,459	$5,145	$6,860
Clarkston 2.74% for 20 yr	Nov-06	May-07	$705,000	$3,525	$4,230	$4,583	$5,288	$7,050
Glen Canyon SSD @ 0% 20 yr	Nov-06	May-07	$484,000	$2,420	$2,904	$3,146	$3,630	$4,840
Orderville 2.22% 30 yr	Nov-06	Jul-07	$1,569,000	$7,845	$9,414	$10,199	$11,768	$15,690
Escalante 2.46% 30 yr	Mar-07	Summer 07	$1,560,000	$7,800	$9,360	$10,140	$11,700	$15,600
2008 unauthorized funds			$5,000,000	$25,000	$30,000	$32,500	$37,500	$50,000
			Total:	**$61,920**	**$74,304**	**$80,496**	**$92,880**	**$123,840**

DIVISION OF DRINKING WATER

FEDERAL LOAN FUNDS

PROJECTS AUTHORIZED BUT NOT YET FUNDED

AS OF MARCH 31, 2007

Community	Date Authorized	Date Closed/Anticipated	Loan Amount	Loan Origination Fee				
				0.50%	0.60%	0.65%	0.75%	1.00%
CICWCD Phase II	Nov-06	Jun-07	$3,425,000	$17,125	$20,550	$22,263	$25,688	$34,250
Croydon, 20 yrs	Aug-06	Jan-08	$327,000	$1,635	$1,962	$2,126	$2,453	$3,270
Logan #3	May-05	Oct-07	$3,000,000	$15,000	$18,000	$19,500	$22,500	$30,000
Portage	Sep-05	May-07	$441,000	$2,205	$2,646	$2,867	$3,308	$4,410
St. George	Mar-05	Jan-08	$6,000,000	$30,000	$36,000	$39,000	$45,000	$60,000
Twin Creeks #2	Apr-03	Jul-07	$360,000	$1,800	$2,160	$2,340	$2,700	$3,600
Woodland Kolob Acres	Mar-05	Jul-07	$450,000	$2,250	$2,700	$2,925	$3,375	$4,500
2008 Authorizations			$10,000,000	$50,000	$60,000	$65,000	$75,000	$100,000
		Total:	**$24,003,000**	**$120,015**	**$144,018**	**$156,020**	**$180,023**	**$240,030**

6. 2) STATE SRF APPLICATIONS

a) ENOCH CITY PLANNING - JULIE

Enoch City
Presented to Drinking Water Board
May 11, 2007

DRINKING WATER BOARD
BOARD PACKET FOR PLANNING LOAN
AUTHORIZATION

APPLICANT'S REQUEST:

Enoch City is requesting a Planning Loan for the amount of $36,000 to complete a Water System Master Plan.

STAFF COMMENTS:

The Water System Master Plan is also being funded by Central Iron County Water Conservancy District (CICWCD); they have approved $20,000 in grant. The plan will provide explanations of the deficiencies of the present water supply and projections of the improvements needed to upgrade both the existing system and for expanding the City's distribution, storage and source capacity to meet the future demands of a growing population. The plan will also address possible synergies with CICWCD and the areas served by the City. A Capital Improvements Program will be developed to provide direction for the City's budget cycle. Consumption and cost information will be gathered and the projections developed will be used to prepare and propose equitable conservation-minded and sound Water Service Rates Charge Schedules and Connection Fee and Impact Fee Structures. Lastly, a Water Conservation Plan addressing how Enoch can reduce water usage in the City will be prepared.

SRF/CONSERVATION COMMITTEE RECOMMENDS:

The Drinking Water Board authorize a $36,000 planning loan to Enoch City at 0% interest for 5 years, repaying $7,200 annually beginning one (1) year from the date the loan agreement is signed, with the condition that they resolve the appropriate issues on their compliance report

APPLICANT'S LOCATION:

Enoch City is located in Iron County.

MAP OF APPLICANT'S LOCATION:

PLANNING DESCRIPTION/SCOPE OF WORK:

The plan will evaluate needed improvements to remedy any existing deficiencies and provide expansion to their supply of water of adequate quantity and satisfactory quality to satisfy the needs of the future population of the City. In addition, the plan will investigate how CICWCD can assist the City. To budget for these improvements, the City further wishes to conceptualize the water supply facility projects to meet the above goals, estimate the costs for construction for each, and prioritize the projects according to urgency and need. These costs will be used to formulate a Capital Improvements Program to provide direction for the City's budget cycle. The consumption and cost information gathered and projections developed will be used to prepare and propose equitable conservation-minded and sound Water Service Rates Charge Schedules, Connection Fee and Impact Fee Structures.

Nolte Associates proposes the following scope of professional services:

- Data collection, preparation of a base map of the city's water supply system and survey of the existing system
- Projections of Enoch City water users and future demand
- Usage analysis
- Water system overview
- Water rights review
- System improvements review: needed upgrades for deficiencies as well as to prepare and expand the City's distribution, storage and source to meet future demands of growing populations
- Possible synergies with CICWCD and surrounding communities
- New source development
- Capital Improvements Plan
- Economics of providing water service
- Rate, impact and connection fees study
- Water Conservation Plan
- Secondary water system analysis

- No action
- Recommendations and conclusions

POPULATION GROWTH:

Enoch City is estimated to grow at an approximate rate of 3.33% on average over the next 20 years (according to the Governor's Office of Planning and Budget).

	Year	Population	ERC's
Current:	2007	4359	1500
Projected:	2030	8400	2800

IMPLEMENTATION SCHEDULE:

Apply to DWB for Planning Funds:	March 2007
SRF Committee Conference Call:	April 2007
DWB Funding Authorization:	May 2007
Completion of PER:	August 2007

COST ESTIMATE:

Master Plan- Engineering:	$56,000.00
Total Planning Cost:	$56,000.00

COST ALLOCATION:

The cost allocation proposed for the project is shown below.

Funding Source	Cost Sharing	Percent of Project
DWB Loan (0%, 5-yr)	$36,000.00	65%
CICWCD (grant)	$20,000.00	35%
Total Amount:	$56,000.00	100%

SPECIAL CONDITIONS:

1. Complete all items as stated in the Engineering Agreement between Enoch City and Nolte Associates.

APPLICANT:	Enoch City 900 East Midvalley Road Enoch City, Utah 84720 Telephone: (435) 586-1119 Fax: (435) 586-8171
PRESIDING OFFICIAL & CONTACT PERSON:	Larry Brough, City Manager 900 East Midvalley Road Enoch City, Utah 84720 Telephone: (435) 586-1119 Fax: (435) 586-8171 Email: larry@cityofenoch.org
TREASURER/RECORDER:	Susan Lewis/ Julie Watson Telephone: (435) 586-1119 Fax: (435) 586-8171 Email: susan@cityofenoch.org
CONSULTING ENGINEER:	Rod Mills, P.E. Nolte Associates 1870 North Main Street Cedar City, Utah 84720 Telephone: (435) 865-1453 Fax: (801) 865-7318 Email: rod.mills@nolte.com
FINANCIAL CONSULTANT:	None Appointed
BOND ATTORNEY:	Richard Chamberlain Chamberlain Associates 225 North 100 East Richfield, UT 84720 Telephone: (435)896-4461 Fax: (435) 896-5441 Email: rchmbrln@xmission.com

11004 Enoch City Water System
Compliance Report

April 2, 2007

Administration:

No issues.

Operator Certification:

No issues.

Bacteriological Information:

The system received a non-acute quality violation for total coliform in November 2006. This sampling needs to continue every month of operation.

Chemical Monitoring:

No issues.

Lead/Copper:

No issues.

Consumer Confidence Report

No issues.

Physical Facilities:

Storage Facility ST001 interior is peeling or cracked and the access needs a proper gasket.

Drinking Water Source Protection:

No issues.

Plan Review:

According to our database, numerous projects have been reviewed and plan approvals issued; but very few if any operating permits have been requested or issued for these projects.

6. 2) STATE SRF APPLICATIONS

b) CIRCLEVILLE – MIKE G.

DRINKING WATER BOARD
BOARD PACKET FOR CONSTRUCTION LOAN
AUTHORIZATION

APPLICANT'S REQUEST

The town of Circleville is requesting $477,983 in financial assistance for drinking water system improvements. The request is composed of two parts:

1. Circleville is requesting $235,983 to refinance an existing USDA-RD loan.
2. A forest fire severely damaged the spring collection area of the Wades Canyon Spring forcing Circleville to cease using the spring as a drinking water source. The town of Circleville is requesting $242,000 from the Drinking Water Board to rehabilitate the spring and allow the town to start using this water source again. Circleville also proposes using this funding to make improvements to its culinary water well, replace a section of damaged distribution system, piping, and address deficiencies identified in a Sanitary Survey conducted in September 2005.

STAFF COMMENTS AND RECOMENDATIONS:

Based on the calculated average monthly water bill after project completion, the town does not qualify for grant money. Their projected monthly water bill after construction is $34.46, 1.58% of local MAGI. The current average water bill is $24.67 per month, based on revenue and connection data supplied by Circleville.

State statute does not allow refinancing existing debt under this loan program. Therefore, DDW is reducing the requested amount by $235,983. The resulting total project cost is $242,000.

A financial analysis, repayment schedule, and compliance report are included in the packet.

System Rating is "NOT APPROVED".

Staff recommends the authorization of the proposed $242,000 construction loan to the Town of Circleville at 2.85% interest for 20 years with a 0.5% loan origination fee for rehabilitation of Wades Canyon Spring, to make improvements to the system's well, to replace damaged distribution piping, and to correct compliance issues identified during a 2005 Sanitary Survey of the Circleville Culinary Water System and in the Compliance Report, with the condition that they become an "approved" water system. The existing $20,000 planning loan will be rolled into the construction funding at loan closing.

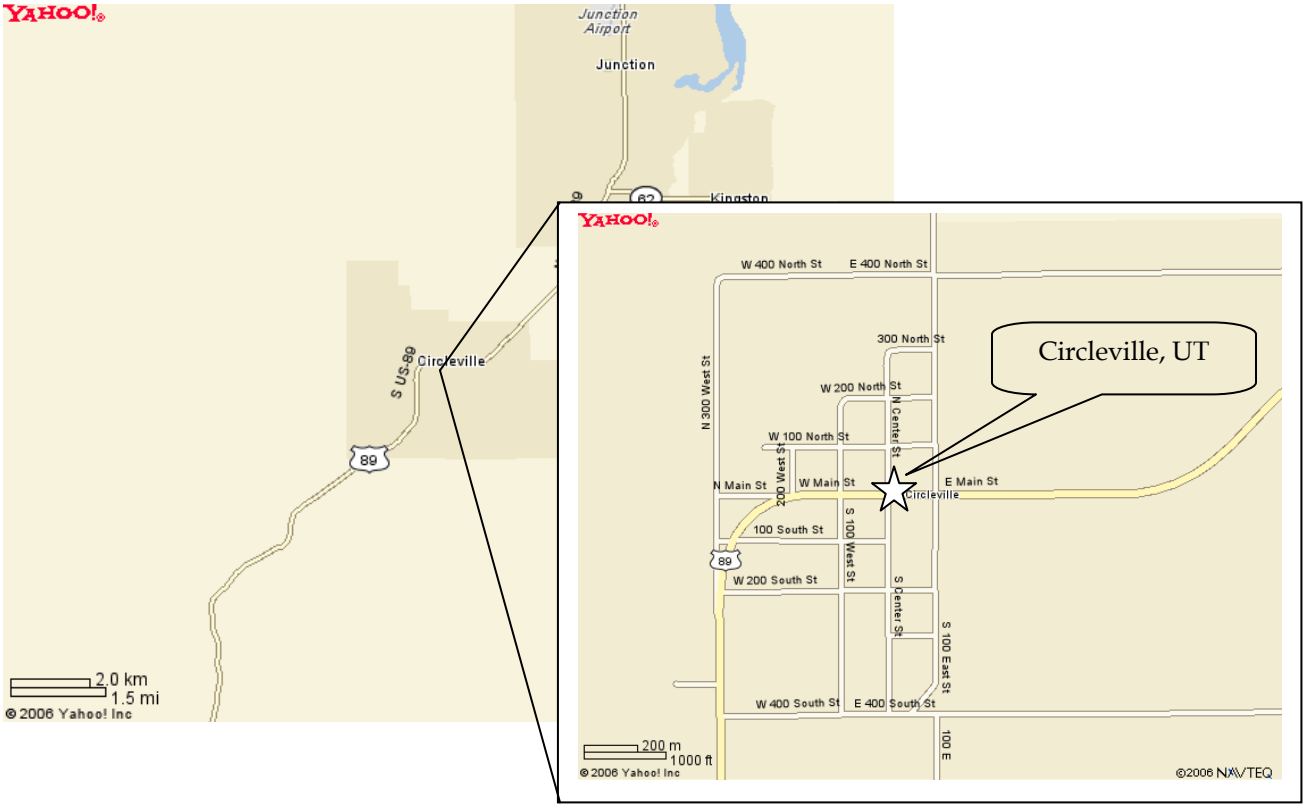
SRF/CONSERVATION COMMITTEE COMMENTS AND RECOMMENDS:

The Drinking Water Board recommends authorizing a $242,000 construction loan to the Town of Circleville at 2.85% for 20 years with a 0.5% loan origination fee as authorized by the Board, with the condition that they correct system deficiencies and compliance issues and do whatever is necessary to become an "approved" water system. The existing $20,000 planning loan will be rolled into the construction funding at loan closing.

APPLICANT'S LOCATION:

The Town of Circleville is located in Piute County, 28 miles north of Panguitch on Highway 89.

MAP OF APPLICANT'S LOCATION:



PROJECT DESCRIPTION:

Rehabilitate the Wades Canyon Spring including improving the collection area and replacing inadequate fencing; installing approximately 1000 feet of 6" transmission line; making improvements to the system's well; replacing a section of damaged distribution pipeline; and addressing and correcting compliance issues and system deficiencies identified during a September 2005 Sanitary Survey and in the Compliance Report.

POPULATION GROWTH:

According to the Governor's Office of Planning and Budget, the Town of Circleville is expected to grow at an average annual rate of change of 0.83% through 2030.

	Year	Population	ERC's
Current	2005	501	309
Projected	2030	616	380

IMPLEMENTATION SCHEDULE:

Apply to DWB for Funding:	January 2007
DWB Funding Authorization:	May 2007
Plans Submitted:	May 2007
Plan Approval:	May 2007
Advertise for Bids:	June 2007
Bid Opening:	June 2007
Loan Closing:	July 2007
Begin Construction:	July 2007
Complete Construction:	August 2007

COST ESTIMATE:

Construction:	$173,000
Engineering:	$40,000
Contingency:	$20,000
Legal/Bonding:	$8,000
DDW Loan Origination Fee	$1,000
Total Capital Cost:	$242,000

COST ALLOCATION:

The cost allocation proposed for the project is shown below.

Funding Source	Cost Sharing	Percent of Project
DWB Loan (2.85%, 20-yr)	$242,000	100.0%
Total Amount:	$242,000	100.0%

ESTIMATED ANNUAL COST OF WATER SERVICE:

Operation & Maintenance:	$83,900
Existing Debt Service:	$20,415
DDW Debt Service (2.85%, 20yrs):	$16,042
DDW 10% Coverage:	$1,604
DDW 15% Partial Coverage:	N/A
5% Replacement Reserve:	$5,814
Total Annual Cost:	$413.51
Monthly Cost / ERU:	$34.46
Cost as % of MAGI:	1.58%

CONTACT INFORMATION:

APPLICANT:	Circleville Town 1100 South Highway 89 Circleville, UT 84723 435-577-2408
PRESIDING OFFICIAL & CONTACT PERSON:	Joe Dalton, Mayor 1100 South Highway 89 Circleville, UT 84723 435-577-2408
CONSULTING ENGINEER:	Eric Franson Franson Noble Engineering 1276 S 820 E, Ste 100 American Fork, UT 84003 801-756-0309
ATTORNEY:	none appointed

DRINKING WATER BOARD FINANCIAL ASSISTANCE EVALUATION

SYSTEM NAME: Circleville FUNDING SOURCE: State SRF

COUNTY: Piute

PROJECT DESCRIPTION: redevelop spring, replace ~1000' transmission line, well improvements, distribution system repair, reduce IPS points

Construction Loan

ESTIMATED POPULATION:	501	NO. OF CONNECTIONS:	309	SYSTEM RATING:	NOT APPROVED
CURRENT AVG WATER BILL:	$24.67 *	NEED PTS:	13	PROJECT TOTAL:	$241,000
CURRENT % OF AGI:	1.13%	FINANCIAL PTS:	44	LOAN AMOUNT:	$242,000
ESTIMATED MEDIAN AGI:	$26,240			GRANT AMOUNT:	$0
STATE AGI:	$34,801			TOTAL REQUEST:	$242,000
SYSTEM % OF STATE AGI:	75%				

	@ ZERO % MKT RATE	@ RBBI RATE	AFTER POINT REDUCTION	AFTER REPAYMENT PENALTY
	0%	4.55%	2.55%	2.85%
ASSUMED LENGTH OF DEBT, YRS:	20	20	20	20
ASSUMED NET EFFECTIVE INT. RATE:	0.00%	4.55%	2.55%	2.85%
REQUIRED DEBT SERVICE:	$12,100.00	$18,684.72	$15,594.08	$16,041.46
*PARTIAL COVERAGE (15%):	$0.00	$0.00	$0.00	$0.00
*ADD. COVERAGE AND RESERVE (10%):	$1,210.00	$1,868.47	$1,559.41	$1,604.15
ANNUAL DEBT PER CONNECTION:	$43.07	$66.52	$55.51	$57.11
O & M + Depreciation:	$83,900.00	$83,900.00	$83,900.00	$83,900.00
OTHER DEBT + COVERAGE:	$20,415.00	$20,415.00	$20,415.00	$20,415.00
REPLACEMENT RESERVE ACCOUNT:	$5,616.60	$5,945.84	$5,791.30	$5,813.67
NEEDED SYSTEM INCOME:	$109,931.60	$110,260.84	$110,106.30	$110,128.67
ANNUAL O&M PER CONNECTION:	$355.77	$356.83	$356.33	$356.40
AVG MONTHLY WATER BILL:	$33.24	$35.28	$34.32	$34.46
% OF ADJUSTED GROSS INCOME:	1.52%	1.61%	1.57%	1.58%

* Current water bill determined using information supplied by Eric Franson in letter dated March 29, 2007

Circleville

PROPOSED BOND REPAYMENT SCHEDULE

PRINCIPAL	$242,000.00	ANTICIPATED CLOSING DATE	01-Oct-07
INTEREST	2.85%	P&I PAYMT DUE	01-Jan-09
TERM	20	REVENUE BOND	
NOMIN. PAYMENT	$16,041.46	PRINC PREPAID:	$0.00

YEAR	BEGINNING BALANCE	DATE OF PAYMENT	PAYMENT	=	PRINCIPAL	INTEREST	ENDING BALANCE	PAYM NO.
2009	$242,000.00		$8,621.25	*	$0.00	$8,621.25	$242,000.00	0
2010	$242,000.00		$15,897.00		$9,000.00	$6,897.00	$233,000.00	1
2011	$233,000.00		$15,640.50		$9,000.00	$6,640.50	$224,000.00	2
2012	$224,000.00		$16,384.00		$10,000.00	$6,384.00	$214,000.00	3
2013	$214,000.00		$16,099.00		$10,000.00	$6,099.00	$204,000.00	4
2014	$204,000.00		$15,814.00		$10,000.00	$5,814.00	$194,000.00	5
2015	$194,000.00		$16,529.00		$11,000.00	$5,529.00	$183,000.00	6
2016	$183,000.00		$16,215.50		$11,000.00	$5,215.50	$172,000.00	7
2017	$172,000.00		$15,902.00		$11,000.00	$4,902.00	$161,000.00	8
2018	$161,000.00		$15,588.50		$11,000.00	$4,588.50	$150,000.00	9
2019	$150,000.00		$16,275.00		$12,000.00	$4,275.00	$138,000.00	10
2020	$138,000.00		$15,933.00		$12,000.00	$3,933.00	$126,000.00	11
2021	$126,000.00		$15,591.00		$12,000.00	$3,591.00	$114,000.00	12
2022	$114,000.00		$16,249.00		$13,000.00	$3,249.00	$101,000.00	13
2023	$101,000.00		$15,878.50		$13,000.00	$2,878.50	$88,000.00	14
2024	$88,000.00		$16,508.00		$14,000.00	$2,508.00	$74,000.00	15
2025	$74,000.00		$16,109.00		$14,000.00	$2,109.00	$60,000.00	16
2026	$60,000.00		$15,710.00		$14,000.00	$1,710.00	$46,000.00	17
2027	$46,000.00		$16,311.00		$15,000.00	$1,311.00	$31,000.00	18
2028	$31,000.00		$15,883.50		$15,000.00	$883.50	$16,000.00	19
2029	$16,000.00		$16,456.00		$16,000.00	$456.00	$0.00	20
			$329,594.75		$242,000.00	$87,594.75		

*Interest Only Payment

Circleville

DWB Loan Terms		
Local Share (total):	$	-
RD Share	$	-
DWB PF Amount:	$	-
DWB Loan Amount:	$	242,000
DWB Loan Term:		20
DWB Loan Interest:		**2.85%**
DWB Loan Payment:	$	16,041

DW Expenses (Estimated)		
Proposed Facility Capital Cost:	$	242,000
Existing Facility O&M Expense:	$	63,800
Proposed Facility O&M Expense:	$	63,800
O&M Inflation Factor:		**1.0%**
Existing Debt Service:	$	20,415

DW Revenue Sources (Projected)		
Beginning Cash:	$	83,900
Existing Customers (ERU):		309
Projected Growth Rate:		**0.4%**
Impact Fee/Connection Fee:	$	1,000
Base Monthly User Charge:	$	24.67
Needed Average Monthly User Charge:	$	34.46
Actual Average Monthly User Charge:	$	-

DW Revenue Projections

Yr	Growth Rate (%)	Annual Growth (ERU)	Total Users (ERU)	User Charge Revenue	Impact Fee Revenue	Total Revenue	DWB Loan Repayment	DWB Loan Reserves	Remaining Principal	Principal Payment	Interest Payment	Existing DW Debt Service	O&M Expenses	Total Expenses	Beginning Cash	Ending Cash Flow	Net Revenue	Debt Service Ratio
0	0.4%	1	310	91,772	1,000	92,772	-	-	242,000	-	-	20,415	63,800	84,215	83,900	92,457	8,557	-
1	0.4%	1	311	128,605	1,000	129,605	**16,041**	**1,604**	232,856	9,144	6,897	20,415	63,800	101,861	92,457	120,202	27,744	1.81
2	0.4%	1	312	129,018	1,000	130,018	**16,041**	**1,604**	223,450	9,405	6,636	20,415	64,438	102,499	120,202	147,721	27,520	1.80
3	0.4%	1	313	129,432	1,000	130,432	**16,041**	**1,604**	213,777	9,673	6,368	20,415	65,082	103,143	147,721	175,010	27,289	1.79
4	0.4%	1	314	129,845	1,000	130,845	**16,041**	**1,604**	203,829	9,949	6,093	20,415	65,733	103,794	175,010	202,061	27,051	1.79
5	0.4%	1	315	130,259	1,000	131,259	**16,041**	**1,604**	193,596	10,232	5,809	20,415	66,391	104,451	202,061	228,869	26,808	1.78
6	0.4%	1	316	130,672	1,000	131,672	**16,041**	**1,604**	183,072	10,524	5,517	20,415	67,054	105,115	228,869	255,426	26,557	1.77
7	0.4%	1	317	131,086	1,000	132,086	**16,041**	**1,604**	172,248	10,824	5,218	20,415	67,725	105,786	255,426	281,727	26,300	1.77
8	0.4%	1	318	131,499	1,000	132,499	**16,041**	**1,604**	161,116	11,132	4,909	20,415	68,402	106,463	281,727	307,763	26,037	1.76
9	0.4%	1	319	131,913	1,000	132,913	**16,041**	**1,604**	149,666	11,450	4,592	20,415	69,086	107,147	307,763	333,529	25,766	1.75
10	0.4%	1	320	132,326	1,000	133,326	**16,041**	**1,604**	137,890	11,776	4,265	20,415	69,777	107,838	333,529	359,018	25,489	1.74
11	0.4%	1	321	132,740	1,000	133,740	**16,041**		125,779	12,112	3,930	20,415	70,475	106,931	359,018	385,826	26,809	1.74
12	0.4%	1	322	133,153	1,000	134,153	**16,041**		113,322	12,457	3,585	20,415	71,180	107,636	385,826	412,344	26,517	1.73
13	0.4%	1	323	133,567	1,000	134,567	**16,041**		100,510	12,812	3,230	20,415	71,891	108,348	412,344	438,563	26,219	1.72
14	0.4%	1	324	133,980	1,000	134,980	**16,041**		87,333	13,177	2,865	20,415	72,610	109,067	438,563	464,476	25,914	1.71
15	0.4%	1	325	134,394	1,000	135,394	**16,041**		73,781	13,552	2,489	20,415	73,336	109,793	464,476	490,078	25,601	1.70
16	0.4%	1	326	134,808	1,000	135,808	**16,041**		59,842	13,939	2,103	20,415	74,070	110,526	490,078	515,359	25,281	1.69
17	0.4%	1	327	135,221	1,000	136,221	**16,041**		45,506	14,336	1,706	20,415	74,811	111,267	515,359	540,313	24,954	1.68
18	0.4%	1	328	135,635	1,000	136,635	**16,041**		30,762	14,745	1,297	20,415	75,559	112,015	540,313	564,932	24,619	1.68
19	0.4%	1	329	136,048	1,000	137,048	**16,041**		15,597	15,165	877	20,415	76,314	112,771	564,932	589,210	24,277	1.67
20	0.4%	1	330	136,462	1,000	137,462	**16,041**	-	0	15,597	445	20,415	77,077	113,534	589,210	613,138	23,928	1.66
								Total Paid in Debt Service =		242,000	78,829						

16002 Circleville
Compliance Report
January 26, 2007

Administration:

Need the following elements of a Cross Connection Control Program: a) legal authority, b) public awareness, c) trained staff, d) written records and e) on-going enforcement.

Operator Certification:

No issues

Bacteriological Information:

Total Coliform routine monitoring violation for May 2006.

Chemical Monitoring:

Nitrate monitoring for the Circleville Well is past due.

Lead/Copper:

No issues

Consumer Confidence Reports:

The 2005 report due on July 1, 2006 is past due.

Physical Facilities:

Several vents on the transmission line from the sources need a #14 mesh screen.

The deep rooted vegetation at the Cottonwood and Wade Springs need to be removed.

The adequacy of construction of the Cottonwood and Wade Springs need to be verified that the following is in order: a) shoebox lids, b) air vents with proper screens, c) proper clearance above ground, d) boxes are adequately secured, and e) overflow lines are screened and discharge 12 inches above grade.

The 250,000 tank vent is missing a #14 mesh screen and the overflow line is missing a #4 mesh screen. Also the access man-way needs to a gasket and a lock.

Drinking Water Source Protection:

No issues

Plan Review:

Last Plan review submittal was Novemeber 21, 2003 for Replacement of 13,520 feet of 4-inch waterline that was washed out which was reviewed and approved by Roger Foisy and an operating permit was issued on March 8, 2004.

6. 2) STATE SRF APPLICATIONS

c) ESCALANTE - KARIN

State of Utah

Department of Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

M E M O R A N D U M

TO: Drinking Water Board

FROM: Karin Tatum

DATE: April 18, 2007

SUBJECT: Escalante City – Update

Anne Erickson requested an update from Staff on the status of the Community Impact Board's decision.

- March 2, 2007 – Drinking Water Board Authorization of Funding
- April 5, 2007 – Community Impact Board Authorization of Funding

Fund Source:	Cost Share:	% of Project:
Local Contribution	$23,000	1%
CIB Grant	$910,895	20%
CIB Loan (2.5%, 30-yr)	$1,250,000	29%
Drinking Water Board Grant	$600,896	14%
Drinking Water Board Loan (2.46%, 30-yr)	$1,560,000	36%
Total Amount:	$4,344,791	100%

- 2 Phases : Closing both in the next 6 months

6. 3) FEDERAL SRF APPLICATIONS

a) CROYDON DEAUTHROZIATION – KEN W.

Croydon
Presented to the Drinking Water Board
May 11, 2007

DRINKING WATER BOARD
BOARD PACKET FOR DEAUTHORIZATION
INTRODUCTION TO SRF COMMITTEE

STAFF COMMENTS AND RECOMMENDATIONS:

On August 13, 2004 the Drinking Water Board authorized a loan of $327,000 to Croydon Pipeline Company. Staff mailed a letter to Croydon on January 26, 2007 requesting a response on use of authorized funds. Croydon was given 30 days to notify staff if they planned to proceed with the project, otherwise staff would recommend that the Drinking Water Board de-authorize said funds so that they could be used for projects that are ready to proceed. Staff did not receive a response.

The Drinking Water Board recommends de-authorizing the $327,000 loan to Croydon Pipeline Company.

6. 3) FEDERAL SRF APPLICATIONS

b) PORTAGE ADDITIONAL FUNDING - JULIE

Town of Portage
Presented to Drinking Water Board
May 11, 2007

DRINKING WATER BOARD
BOARD PACKET FOR CONSTRUCTION LOAN
AUTHORIZATION

APPLICANT'S REQUEST:

The Town of Portage is requesting additional funding in the amount of $131,000 from the Drinking Water Board for increased construction costs, bringing the cost of the project to $1,221,500.

STAFF COMMENTS:

On September 9, 2005, the Drinking Water Board authorized a loan of $546,000 (2.57%, 20 years) to the Town of Portage and a grant of $544,500 to develop their Upper Spring, construct a new 500,000 gallon storage tank and install 4,000 feet of spring transmission lines and 4,500 feet of tank transmission lines. The project has been delayed due to requirements of the Division of Water Rights involving a change application to modify the usage from irrigation to municipal purposes for the Upper Spring.

On July 14, 2006, the Board authorized an additional 360 day time extension of the loan authorization letter with a new expiration date of July 9, 2007.

The water rights change application was approved in a letter dated January 26, 2007, from Jerry D. Olds, P.E., State Engineer with the Division of Water Rights.

The project opened for bids in February 2007. The low bidder, ABCO Construction, came in higher than what was originally budgeted for. In addition, the low bidder has requested an extension to their contract from four months to seven months, which will increase the construction management contract (CMS) for Sunrise Engineering.

SRF/CONSERVATION COMMITTEE RECOMMENDS:

The Drinking Water Board authorize an increase in the original funding to the Town of Portage to a $611,000 construction loan at 2.12% interest for 25 years, and a $610,500 grant. In addition, it is recommended that the Board accept the modified repayment schedule included in the packet.

APPLICANT'S LOCATION:

Portage is located in Box Elder County.

MAP OF APPLICANT'S LOCATION:

POSITION ON PROJECT PRIORITY LIST:

Portage has 14 points on the project priority list.

PROJECT DESCRIPTION:

The project involves development of their Upper Spring, construction of a new 500,000 gallon storage tank and installation of 4,000 ft of transmission lines and 4,500 ft of tank transmission lines.

POPULATION GROWTH:

The Town of Portage is expected to grow at a rate of 1.63% over the next 40 years according to the Governor's Office of Planning and Budget.

	Year	Population	ERC's
Current:	2006	330	100
Projected:	2030	443	150

IMPLEMENTATION SCHEDULE:

Apply to DWB for Additional Construction Funds:	March 2007
SRF Committee Conference Call:	April 2007
DWB Funding Authorization:	May 2007
Loan Closing	May 2007
Begin Construction:	June 2007
Complete Construction:	December 2007

COST ESTIMATE:

Original (September 2005)		Modified (February 2007)	
Legal	$10,000	Legal	$10,000
User Rate Ordinance	$5,000	User Rate Ordinance	$5,000
Engineering- Design	$85,500	Engineering- Design	$85,000
Engineering- CMS	$93,000	Engineering- CMS	$122,000
Environmental Assessment	$10,000	Environmental Assessment	$10,000
Construction	$825,500	Construction	$941,914
Contingency	$61,500	Contingency	$47,086
Total Project Cost	**$1,090,500**	**Total Project Cost:**	**$1,221,500**

COST ALLOCATION:

The cost allocation proposed for the project is shown below.

Funding Source	Cost Sharing	Percent of Project
DWB Loan (2.12%, 25-yr)	$611,000	50%
DWB Grant	$610,500	50%
Total Amount	$1,221,500	100%

ESTIMATED ANNUAL COST OF WATER SERVICE:

Operation and Maintenance: $35,997
DDW Debt Service (2.12%, 25 years): $37,801
DDW Debt Reserve: $3,780
Total Annual Cost: $77,578
Annual Cost/ERC (100): $775.78
Monthly Cost/ERC (100): $64.65
Cost as % MAGI: 2.36

SPECIAL CONDITIONS:

1. Resolve the appropriate issues on their compliance report

APPLICANT:	Town of Portage 25880 North 9000 West Portage, Utah 84331 Telephone: (435) 866-2108
PRESIDING OFFICIAL & CONTACT PERSON:	Larry Howell, Mayor 25880 North 9000 West Portage, Utah 84331 Telephone: (435) 866-2108 Email: portagetown@citilink.net
CONSULTING ENGINEER:	Scott Archibald, P.E. Sunrise Engineering 12227 South Business Park Drive, Ste. 220 Draper, UT 84020 Telephone: (801) 523-0100 Email: sarchibald@sunrise-eng.com
FINANCIAL CONSULTANT:	None Appointed
ATTORNEY:	Eric Johnson Smith Hartvigsen, PLLC 215 South State Street, Suite 650 Salt Lake City, Utah 84111 Telephone: 801-413-1600 Fax: 801-413-1620 Email: eric@smithlawonline.com

Town of Portage

DWB Loan Terms		
Local Share (total):	$	-
RD Share	$	-
DWB PF Amount:	$	-
DWB Loan Amount:	$	611,000
DWB Loan Term:		25
DWB Loan Interest:		**2.12%**
DWB Loan Payment:	$	31,738

DW Expenses (Estimated)		
Proposed Facility Capital Cost:	$	1,221,500
Existing Facility O&M Expense:	$	35,997
Proposed Facility O&M Expense:	$	35,997
O&M Inflation Factor:		**0.0%**
Existing Debt Service:	$	-

DW Revenue Sources (Projected)		
Beginning Cash:	$	40,702
Existing Customers (ERC):		100
Projected Growth Rate:		**1.6%**
Treatment Impact Fee/Connection Fee:	$	3,483
Base Monthly User Charge:	$	38.00
Needed Average Monthly User Charge:	$	46.00

DW Revenue Projections

Yr	Growth Rate (%)	Annual Growth (ERC)	Total Users (ERC)	User Charge Revenue	Impact Fee Revenue	Total Revenue	DWB Loan Repayment	DWB Loan Reserves	Remaining Principal	Principal Payment	Interest Payment	Existing DW Debt Service	O&M Expenses	Total Expenses	Beginning Cash	Ending Cash Flow	Net Revenue	Debt Service Ratio
2008	1.6%	2	102	46,512	6,966	53,478	-	-	611,000	-	12,953	-	35,997	35,997	40,702	58,183	17,481	-
2009	1.6%	2	104	57,408	6,966	64,374	**21,953**	**2,195**	602,000	9,000	12,953	-	35,997	60,146	58,183	62,411	4,228	1.29
2010	1.6%	2	106	58,512	6,966	65,478	**22,762**	**2,195**	592,000	10,000	12,762	-	35,997	60,955	62,411	66,935	4,523	1.30
2011	1.6%	2	108	59,616	6,966	66,582	**23,550**	**2,195**	581,000	11,000	12,550	-	35,997	61,743	66,935	71,774	4,839	1.30
2012	1.6%	2	110	60,720	6,966	67,686	**25,317**	**2,195**	568,000	13,000	12,317	-	35,997	63,510	71,774	75,951	4,176	1.25
2013	1.6%	2	112	61,824	6,966	68,790	**26,042**	**2,195**	554,000	14,000	12,042	-	35,997	64,234	75,951	80,507	4,556	1.26
2014	1.6%	2	114	62,928	6,966	69,894	**26,745**	**2,195**	539,000	15,000	11,745	-	35,997	64,937	80,507	85,463	4,957	1.27
2015	1.6%	2	116	64,032	6,966	70,998	**27,427**	**2,195**	523,000	16,000	11,427	-	35,997	65,619	85,463	90,842	5,379	1.28
2016	1.6%	2	118	65,136	6,966	72,102	**28,088**	**2,195**	506,000	17,000	11,088	-	35,997	66,280	90,842	96,664	5,822	1.29
2017	1.6%	2	120	66,240	6,966	73,206	**28,727**	**2,195**	488,000	18,000	10,727	-	35,997	66,920	96,664	102,951	6,286	1.30
2018	1.6%	2	122	67,344	6,966	74,310	**30,346**	**2,195**	468,000	20,000	10,346	-	35,997	68,538	102,951	108,723	5,772	1.26
2019	1.6%	2	124	68,448	6,966	75,414	**30,922**		447,000	21,000	9,922	-	35,997	66,919	108,723	117,218	8,495	1.27
2020	1.6%	2	126	69,552	6,966	76,518	**32,476**		424,000	23,000	9,476	-	35,997	68,473	117,218	125,263	8,045	1.25
2021	1.6%	2	128	70,656	6,966	77,622	**32,989**		400,000	24,000	8,989	-	35,997	68,986	125,263	133,899	8,636	1.26
2022	1.6%	2	130	71,760	6,966	78,726	**33,480**		375,000	25,000	8,480	-	35,997	69,477	133,899	143,148	9,249	1.28
2023	1.6%	2	132	72,864	6,966	79,830	**33,950**		349,000	26,000	7,950	-	35,997	69,947	143,148	153,031	9,883	1.29
2024	1.6%	2	134	73,968	6,966	80,934	**35,399**		321,000	28,000	7,399	-	35,997	71,396	153,031	162,569	9,538	1.27
2025	1.6%	2	136	75,072	6,966	82,038	**35,805**		292,000	29,000	6,805	-	35,997	71,802	162,569	172,805	10,236	1.29
2026	1.6%	2	138	76,176	6,966	83,142	**37,190**		261,000	31,000	6,190	-	35,997	73,187	172,805	182,760	9,955	1.27
2027	1.6%	2	140	77,280	6,966	84,246	**38,533**		228,000	33,000	5,533	-	35,997	74,530	182,760	192,476	9,716	1.25
2028	1.6%	2	142	78,384	6,966	85,350	**38,834**		194,000	34,000	4,834	-	35,997	74,831	192,476	202,995	10,519	1.27
2029	1.6%	2	144	79,488	6,966	86,454	**40,113**		158,000	36,000	4,113	-	35,997	76,110	202,995	213,339	10,344	1.26
2030	1.6%	2	146	80,592	6,966	87,558	**41,350**		120,000	38,000	3,350	-	35,997	77,347	213,339	223,551	10,211	1.25
2031	1.6%	2	148	81,696	6,966	88,662	**40,544**		82,000	38,000	2,544	-	35,997	76,541	223,551	235,672	12,121	1.30
2032	1.6%	2	150	82,800	6,966	89,766	**41,738**		42,000	40,000	1,738	-	35,997	77,735	235,672	247,702	12,031	1.29
2033	1.6%	2	152	83,904	6,966	90,870	**42,890**		-	42,000	890	-	35,997	78,887	247,702	259,685	11,983	1.28
								Total Paid in Debt Service =		611,000	219,123							

02012 Portage Town Water System
Compliance Report
April 2, 2007

Administration:

The system needs the following elements of a Cross Connection Control Program: a) Public notification, b) trained operator, c) written records and d) on-going enforcement.

The system needs a lead/copper-monitoring plan

Operator Certification:

No issues.

Bacteriological Information:

No issues.

Chemical Monitoring:

Nitrate sampling on the South Canyon Spring and the New Well is past due.

VOC sampling on the South Canyon Spring is past due.

Lead/Copper:

System is currently on an annual monitoring frequency for Lead/Copper samples. The system last sampled for Lead/Copper in 2003.

Consumer Confidence Report

2005 calendar year report due on July 1, 2006 has not been submitted.

Physical Facilities:

New Well pump to waste line must have a minimum of 12 inch ground clearance and be screened with a #4 mesh screen.

The South Canyon Spring fence needs some minor repairs.

1978 well needs an air relief valve.

The chlorination facility needs a repair kit for a 150 pound chlorine cylinder and the system needs to maintain a measurable chlorine residual.

The system lacks 10% of the required storage capacity.

Drinking Water Source Protection:

No issues.

Plan Review:

According to our database, numerous projects have been reviewed and plan approvals issued; but very few if any operating permits have been requested or issued for these projects.

6. 3) FEDERAL SRF APPLICATIONS

c) ERDA ACRES SPECIAL SERVICES DISTRICT - KARIN

State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

M E M O R A N D U M

TO: Drinking Water Board

FROM: Karin Tatum

DATE: May 11, 2007

SUBJECT: Erda Acres/West Erda – Update

The following is a status report of the proposed regional water system in Tooele County.

- March 23, 2007 – Meeting with Toole County Commissioners, County Engineer, Local Health Department, Consulting Engineers, Division of Drinking Water Staff

- *Proposed* Funding Package (Prior to March 23, 2007 Meeting):

Fund Source:	**Cost Share:**	**% of Project:**
Local Contribution	$300,000	14%
Drinking Water Board Grant		
- West Erda (*Committed June 2002*)	$380,000	18%
- Erda Acres	$490,000	23%
Drinking Water Board Loan		
- West Erda (*Committed June 2002*)	$380,000	18%
- Erda Acres	$595,000	27%
Total Amount:	**$2,145,000**	**100%**

- What's new from the March 23rd Meeting?
  1) Discussions about the Options are on-going – Who will benefit? Nobody wants to pay for another persons system, when they should have been paying for it themselves.
  2) Airport may join the system and contribute to the overall project

3) Possible contribution from the County

There's a lot of history (20-30 years) with this project that most of us have not been part of. We see a snapshot of the timeframe that we have been part of this project (1-3+ years). Most likely all we see is a Non-Compliant Community (West Erda).

- *Proposed* Funding Package (Post March 23, 2007 Meeting):

Fund Source:	**Cost Share:**	**% of Project:**
Local Contribution	$300,000	14%
Airport – (Estimate)	$500,000	23%
Tooele County Commission	$200,000	9%
Drinking Water Board Grant		
- West Erda (*Committed June 2002*)	$380,000	18%
- **Erda Acres**	**$765,000**	**36%**
Total:	**$2,145,000***	**100%**

* Does not include the additional expenses associated with adding the Airport.

- Updated Project Expenses (Received April 25, 2007) – Viewed as One System/Project:

Details:	Erda/Spiral Springs/West Erda/Airport:
Engineering:	$325,000.00
Administration:	$7,000.00
Legal Bonding	$12,000.00
Additional Non-Construction Expenses:	$100,000.00
Construction:	$1,931,160.00
Contingency:	$193,000.00
Sub Total Project:	**$2,568,160.00**
Loan Origination Fee (0.5%):	$12,840.00
Total Updated Project Expenses:	**$2,581,000.00**

*Includes additional Airport expenses AND necessary upgrades for the West Erda lines.

The modified scope of the project adds a total of $436,000.00 to the overall project cost that will need to be funded.

Hopefully the Airport, the County Commission and the Division of Drinking Water will be able to fund the difference.

What is our limit in helping out this community and promoting a solid regional system?

Do we want to make a statement with this Project?

How committed are we (the DWB) to this project?

ERDA ACRES CULINARY WATER MASTER PLAN - 2006

TABLE 11-A
OPINION OF PROBABLE COST

IMPROVEMENTS W/WEST ERDA SSD

Item Description	Qty.	Units	Unit Price	Amount
Mobilization	1	L.S.	90,000.00	$ 90,000.00
16" PVC C900 SDR 18 Pipe & Fittings	4,780	Ln. Ft.	36.00	$ 172,080.00
16" Gate Valves	2	Each	3,600.00	$ 7,200.00
12" PVC C900 SDR 18 Pipe & Fittings	17,220	Ln. Ft.	29.00	$ 499,380.00
12" Gate Valves	17	Each	2,800.00	$ 47,600.00
Asphalt Sawcut	3,600	In. Ft.	1.00	$ 3,600.00
Untreated Base Course	6,000	Ton	15.00	$ 90,000.00
Asphalt	30	Ton	200.00	$ 6,000.00
Drain Rock	1,500	Ton	10.00	$ 15,000.00
700,000 Gallon Concrete Storage Tank	1	L.S.	380,000.00	$ 380,000.00
Tank Site Earthwork	1	L.S.	20,000.00	$ 20,000.00
Tank Site Appurtenances	1	L.S.	15,000.00	$ 15,000.00
Nelson Well Pump-to-Waste Drain Field	1	L.S.	30,000.00	$ 30,000.00
Nelson Well VFD	1	L.S.	5,000.00	$ 5,000.00
Nelson Well SCADA	1	L.S.	15,000.00	$ 15,000.00
Campbell Well SCADA	1	L.S.	30,000.00	$ 30,000.00
Tank Site SCADA	1	L.S.	10,000.00	$ 10,000.00
Silver Spur Connection SCADA	1	L.S.	10,000.00	$ 10,000.00
Connection to Silver Spur System	1	L.S.	8,000.00	$ 8,000.00
Core Existing Tank for New Outlet	1	L.S.	5,000.00	$ 5,000.00
Replace Access Hatch and Ladder at Ex. Tank	1	L.S.	4,500.00	$ 4,500.00
Common Chlorination Control Building	1	L.S.	60,000.00	$ 60,000.00
Chlorination Equipment	1	L.S.	14,000.00	$ 14,000.00
10" Swing Check Valves	2	Each	850.00	$ 1,700.00
8" PVC C900 SDR 18 Pipe & Fittings	7,500	Ln. Ft.	18.00	$ 135,000.00
8" Gate Valves	12	Each	1,500.00	$ 18,000.00
Fire Hydrant Assembly	8	Each	2,500.00	$ 20,000.00
Service Connection Assembly	25	Each	600.00	$ 15,000.00
3/4" Service Lateral Pipe	1,000	Ln. Ft.	8.00	$ 8,000.00
Replacement Radio Read Meters Complete	120	Each	230.00	$ 27,600.00
Radio Read Meter Mgmt Equip. Software, & Trng	1	L.S.	12,500.00	$ 12,500.00
Reconnect Existing Service Laterals	76	Each	1,000.00	$ 76,000.00
Booster Pump Station Vault	1	L.S.	65,000.00	$ 65,000.00
PRV Station	1	L.S.	15,000.00	$ 15,000.00
				$ -
			Subtotal Construction Cost	**$ 1,931,160.00**
			Contingency	$ 193,000.00
			Total Construction Cost	**$ 2,124,160.00**
Additional Non Construction Expenses				
Nelson Well Pump-to-Waste Drain Field Property	1	L.S.	90,000.00	$ 90,000.00
Tank Overflow/Drain Outlet Channel Easement	1	L.S.	10,000.00	$ 10,000.00
Professional Services				
Administration	1	L.S.	7,000.00	$ 7,000.00
Engineering Design	1	L.S.	133,000.00	$ 133,000.00
Quality Control and Inspection	1	Hourly	$ 164,000.00	$ 164,000.00
Survey	1	L.S.	6,000.00	$ 6,000.00
Easement Preparation	1	Hourly	2,000.00	$ 2,000.00
SSD Formation	1	L.S.	20,000.00	$ 20,000.00
Legal/Bond Closing	1	L.S.	12,000.00	$ 12,000.00
Loan Origination Fee @ 0.5%	1	L.S.	142,000.00	$ 12,840.80
			TOTAL PROJECT COST	**$ 2,581,000.80**

AGENDA ITEM 7

AUTHORIZATION TO PROCEED WITH RULE ADOPTION – 2/LT2/LT1

Authorization to Proceed with Rule Adoption
R309-105, 110, 210, 215, 220 & 225

Federal Rule Adoption & Reorganization

On March 2, 2007, the Board authorized the Division to proceed with filling rule changes to R309-100, 105, 110, 210, 215, 220 and 225 in order to address the comments received from Region 8 EPA's review of the draft primacy application.

The Division has not received any comments on the proposed changes.

Staff Recommendation:

Staff recommends the Drinking Water Board authorize staff to proceed with filing the effective notices for R309-105, 110, 210, 215, 220 and 225.

AGENDA 8

MOUNTAIN VIEW COMMUNITY PARK PENALTY REVISION

Mountain View Community Park, LLC
System #UTAH20034

Revision of Penalty

On January 9, 2007, the Board authorized a stipulated penalty of $3,500 be assessed to the water system for compliance failure. The attached report outlines the compliance issues and the resolutions. Division staff would like to petition the Board to revise the penalty to allow for the analytical cost of a Total Inorganic Water Chemistry to be deducted from the penalty.

The system is classified as a transient non-community system as they serve less than 25 of the same individual either year round or for more than 6 months in a years time. However, they are right on the threshold and rather than just collect the penalty, the Division feels that to have a baseline inorganic chemistry collected and analyzed would be in the best interest of public health.

Staff Recommendation:

Staff recommends the Board revise the stipulated penalty imposed on Mountain View Community Park, LLC (UTAH20034) to allow for the submittal of an invoice for a Total Inorganic Water Chemistry to reduce the penalty by a like dollar amount. The total of the analytical cost and the residual penalty will remain $3,500.

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

MEMORANDUM

TO: Kenneth H. Bousfield, P.E., Director

THROUGH: Patti Fauver, Rules Section Manager

FROM: John Oakeson

DATE: April 25, 2007

SUBJECT: Meeting with System # 20034

Attached are the discussion notes from a meeting held yesterday with representatives of the Mountain View Community Park, LLC drinking water system. Supporting documentation is also attached.

Please contact Patti or me if you have any questions.

Thank you

April 24, 2007 Meeting with
Mountain View Community Park, LLC System #20034

Patti Fauver and John Oakeson, representing the Division of Drinking Water, met with John Johnson and Kent Johnson, representing Mountain View Community Park, LLC on April 24, 2007. The purpose of this meeting was to discuss the status of the Mountain View Community Park, LLC drinking water system and how to proceed from this point to achieve compliance.

The issues outlined for discussion were: 1) determine an accurate full time resident population and transient population, 2) determine the classification of the system and how that status will affect the Drinking Water Source Protection and monitoring requirements for the system, 3) storage capacity issues, 4) payment of the $3,500 stipulated fine.

Population:

John Johnson presented a count of the full time residents currently residing in the park. There are 24 full time residents at this time. One mobile home will be vacated within a short time as the residents are building a home. This will drop the full time count to 21. The daughter of this family, living in a separate mobile home, will most likely be moving in with her parents when they move into the new home. This will eliminate 1 more mobile home and 3 more residents. As full time lots are vacated, they will no longer be utilized as full time residential lots, but will be converted to RV lots. The populations were set at 24 residential and 14 transient for a total of 38.

The Johnson's have obtained lease agreements for each lot considered to be a full time residence. This lease agreement limits the number of full time residents for each lot to those listed on the lease agreement. The lease agreement also specifies conditions for allowing guests to reside with full time residents including specific time limits for length of stay.

Classification of System and Monitoring Requirements:

Patti Fauver agreed to classify the Mountain View Community Park, LLC drinking water system as a Transient Non-community system based on the population information presented.

TCR monitoring - As a non-community system Mountain View Community Park, LLC will be required to collect one bacteriologic sample quarterly. The system is current with this requirement.

Source monitoring - the Mountain View Community Park, LLC will be required to collect an annual nitrate sample and a sulfate sample each 3 years. The system is current on these samples. A nitrate sample will be due before December 31, 2007. A sulfate sample will be due between January 1, 2008 and December 31, 2010.

Drinking Water Source Protection Plan - The system well was completed prior to 1993. Therefore, as a non-community system a DWSP plan will not be required as per previous Bilateral Compliance Agreement.

Additional monitoring requirements – Ms. Fauver suggested the Mountain View Community Park, LLC to collect a **Total Inorganic Water Chemistry.** This is being required because of the number of full time residents being served the Mountain View Community Park, LLC.

Storage Capacity:

John and Kent stated that it is not economically feasible at this time to construct a storage reservoir for the system. They are aware of the 50 IPS points associate with this efficiency.

Payment of Stipulated Penalties:

The Johnson's had a check in the amount of $3,500 for payment of the stipulated penalties to deliver to the Division at the time of the meeting. Patti suggested that a proposal be presented to the Drinking Water Board at their May 11, 2007 Board meeting to deduct the cost of the Total Inorganic Water Chemistry (approximately $525) upon presentation of analysis invoice from the $3,500 penalty. If the Board agrees to this proposal, Mountain View Community Park, LLC will be notified accordingly. Payment of the penalty will be submitted following notification from the Division.

Other issues discussed:

Mountain View Community Park, LLC currently has 251 IPS points. IPS points associated with source protection, monitoring violations and lack of a certified operator will be removed from their record as a result of the non-community classification. The new IPS score will be 51 points.

John Oakeson is scheduled to conduct a sanitary survey of the Mountain View Community Park, LLC drinking water system this year. He will prepare the survey and send the Johnson's a copy. John has several other surveys to conduct in the area. He will work with Kent to schedule the survey during an evening when he is in the area conducting those other surveys.

Patti and John stressed the importance of on-going communications between the Mountain View Community Park, LLC and the Division of Drinking Water. It is important for the Johnson's to keep the Division apprised of what is happening with the system and to call if they have questions.